NOTES ON EGYPTIAN AFFAIRS.—No. 6.

THE ADMINISTRATION OF JUSTICE IN EGYPT.

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BY
H. R. FOX BOURNE.

EDITED, WITH A PREFACE, BY
JOHN M. ROBERTSON, M.P.

London:
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PREFACE.

By the Editor.

THE following brochure is the last item in the long life's work of its lamented author; and it rounds his special service to Egypt even as it concludes his manifold service to the cause of good government throughout the world. Henry Richard Fox Bourne died on 2nd February last. Unostentatious as he was industrious, Fox Bourne was little known to the mass of his nation, to whose most neglected responsibilities he gave such incessant attention during so many years. In the first half of his adult life a hard worker on the Liberal side in home politics, he gave the last twenty years to the less exciting and attractive but not less important tasks directly or indirectly connected with the work of the Aborigines Protection Society. In that time there can have been few protective measures taken on behalf of the backward or subject races in which he did not lend a helping hand; and there can have been few wrongs inflicted upon them against which he did not utter a weighty and reasoned protest. If the merits of "public" men are to be reckoned in terms of the unselfishness and modesty of their work, latter-day England has produced no worthier publicist than Henry Richard Fox Bourne.

He was one of the rare men who rather shun than seek a public distinction which they have fully earned. His two biographies, 'The Life of John Locke' and the 'Memoir of Sir Philip Sidney' would alone have entitled him to honourable recognition at the hands of the English educated class in his day; but the common ignorance as to the existence of those books was never dissipated by any claim or utterance of his. Politicians in general knew nothing of his literary work; and literary men in general as little of his political work; and being *in* but not *of* the journalistic order, he wrote his 'History of the English Newspaper' without securing for either of his activities the vogue which the press can so well bestow upon less disinterested work. Yet in his 'Romance of Trade' and other works of the kind he had done enough to become distinguished had he been possessed of any of the arts of self-advancement.

To those of us who knew him in the latter part of his life, Fox Bourne was remarkable equally for the sweetness of his character, the

extent of his political and other knowledge, and the combined sanity and humanity of his judgment. These qualities eminently fitted him for the part he had played in earlier years as editor successively of the *Examiner* and the *Weekly Dispatch*, and no less eminently for the post of secretary to the Aborigines Protection Society. Caring nothing for fame or notoriety, he spent himself in the cause of the less fortunate races. It never needed any effort on his part to master the simple but seldom-seen truth that men who, by the loud and constant testimony of masses of their countrymen, are liable to commit error and injustice in conducting the constitutional government of their own country, cannot conceivably be incapable of error and injustice in wielding unconstitutional rule over alien races with whom they have community neither in race nor in language, neither in religion nor in social life. Of the grotesque insincerity of everyday English thinking on these matters, Fox Bourne was incapable. He saw straight in all the problems of politics. He could discover and denounce the scandalous misrule of the Congo Free State—he was indeed the first to bring that matter effectually before the British public—but he could also recognize the injustices wrought by British colonists and administrators in their dealings with subject races, and in descanting on these less popular themes he was quietly persistent. If our record is cleaner than that of other peoples similarly situated and tempted, it is in no small degree due to the unwearying vigilance of men like him. And in the past generation, I think, none has done so much service in that way as he.

Perhaps the least recognised of all his efforts have been those he made in furtherance of the better and freer government of Egypt under the British control. Few as are the people who will subscribe towards the systematic championing of the rights and interests of the "lower" races, there are still fewer who will concern themselves about the fulfilment of British pledges to develop the faculty and practice of self-government in Egypt. The right of subject races to be put upon the path towards self-government is still far from being recognised by men whose humane or juristic instincts readily lead them to acknowledge the duty of protecting backward peoples from selfish exploitation. The prevailing British view of the matter in hand is that to have restored the financial prosperity of Egypt and to have abolished the grosser iniquities of the old despotism there is to have deserved so well of Egyptians and mankind as to make any other comment than panegyric offensive, if not seditious. To meet such modes of thinking with genera reasoning seems idle. Britons cannot be led by mere argument to see

the moral absurdity of their assumption that men whom they will not trust to govern at home without daily supervision and a systematic parliamentary opposition can confidently be trusted to do right without check in Egypt and without other than departmental restraint in India. Thousands of them at home have been objurgating Mr. Lloyd George as a "robber" for months past on the score of the taxes he proposes to put upon some of them. If he were Consul-General at Cairo they would be declaring that he ought to have a "free hand" to govern the people with whom he had no restraining bonds of sympathy such as condition every act of a constitutional minister. Had Lord Cromer, during the last five-and-twenty years, been a British Minister in Parliament instead of Consul-General at Cairo, he would have been daily told that his judgment was at fault and his methods oppressive, no matter what might be his policy. What earned him such nearly unanimous eulogy was rather his services to Egypt's creditors than his services to Egypt. No other test was contemplated. If such thoughtless egoism is ever to be cured it can only be by a steady pressure of exact exposition of fact. And to such exposition Fox Bourne devoted a series of searching essays, of which that now published is the sixth and last.

For the carrying out of such an exposition Fox Bourne had uncommon qualifications. One of those who most closely scrutinised the grounds and manner of the first entrance of British statesmanship into Egyptian affairs, he kept a constant watch upon the developments of the past twenty-seven years. With a care which few of his countrymen ever gave to the subject, he read the whole series of Lord Cromer's annual reports ; and it is from these official sources that he has drawn many of his most cogent testimonies. In the present pamphlet in particular, he indicts the Anglo-Egyptian judicial system on proofs furnished by Lord Cromer himself.

Of his exhaustive series of studies, the present is certainly not the least instructive. It might have been supposed that in such a field as that of judicial institutions his lack of legal training would have made him less at home than on purely political themes. But his power of colligating and illuminating facts has perhaps been even better exhibited here than elsewhere. In this difficult and complex matter he moves with the freedom and facility of an expert. Those who will read with patience and impartiality may here realise that sound finance and competent engineering constitute only a part of the task of administration in Egypt as elsewhere ; that the proper dispensing of

justice is not achieved by the mere abolition of the principle of bribery; and that the doctrine of a "free hand" for a proconsul may involve, among other things, the refusal of desirable scope to subordinate administrators qualified to use a free hand in their special field with exceptional sagacity. The notorious snare of the "strong man" in politics is the temptation to seek tools rather than colleagues. Lord Cromer has had to thank his brilliant success in financial administration for the readiness with which many even of his more thoughtful countrymen forgot that it has never been given to any ruler to be at once a great financier, a great jurist, a great educationist, and a great politician; or even to be at once so good a judge of special competence in all of these directions, and so self-forgetting a controller, as to promote always the best men irrespective of their subservience to his own views.

The plain record of the history of the judicial system in Egypt under the British control may at least serve to bring some Britons back to a recognition of the truth that one-man rule is nowhere a security for the selection or retention of the best officials, much less for the establishment of the best methods in all the many branches of civil government. Even if we treat as a lamentable aberration the shocking "trial" of the Denshawai prisoners in 1906, it is abundantly clear that as regards the repression of crime in Egypt our administration there has latterly been a failure. It is idle to go on boasting of the financial and material progress achieved under our rule when the moral evolution of the people is going downhill. In no other country in the world would such a conjunction be described by Englishmen as otherwise than sinister; and in no case but their own would they dream of giving the government the credit for all the successes and blaming the governed for all the failures. A virtually despotic control must bear the blame of what goes steadily ill if it takes to itself the merit for all that goes well. And when the evil is more vital than the good the dilemma is grave.

In the following pages the part played by a defective system of police and criminal procedure in permitting an increasing crop of crime is made painfully clear; and hardly less clear is the fact that after steady progress had been effected under one able administrator there has been a long retrogression since his removal. But no one realized better than Fox Bourne that for the purification of a nation's life there is needed an educative no less than a penal machinery. He has shown as much in the fifth pamphlet of the series of which this is the last.

The painful fact is that the expenditure upon education in Egypt under the British control, in proportion to the annual revenue, has been smaller than would be held decent in any European State. Two years ago, after resisting many appeals, Lord Cromer suddenly recognized the indefensible character of his budget, and considerably increased the annual allotment, which previously had been about the figure of the cost of a new Nile bridge then being provided for the convenience of officials. Since then money has been found for another bridge; and other forms of expenditure thus increase more rapidly still than the outlay which is most vital. Any demand seems to be more readily listened to than that for expenditure upon education. As the case now stands the British control is in the piquant position of telling the Egyptians that they are too little educated for self-government, while stinting them in all educational means. Of the progress that is now being made in elementary education, much is due to voluntary subscriptions; and still the powers of the new Provincial Councils to control educational expenditure are jealously restricted on the plea that the landed class—who do most of the subscribing—would probably use any taxing power mainly to provide secondary schools for their own children.

Withal, it is comforting to be able to say that under Sir Eldon Gorst real progress is being made upon several lines. He has taken steps towards restoring the powers of the Mudirs; provided for the giving of the higher instruction in the secondary schools in Arabic, instead of, as formerly, in English only; and opened the civil service to natives in an increasing degree. The latter reform, indeed, has brought upon him the hostility of English place-hunters, who pretend that it is lack of English officials that causes the increase of crime. That this is false is abundantly proved in the following pages. The failure to cope with crime is primarily chargeable against the administration of Lord Cromer, and dates from the resignation of Sir John Scott. If Sir Eldon Gorst can but grapple successfully with this most menacing of Egyptian evils he will have earned a credit as solid, whether or not as loudly proclaimed, as that due to Lord Cromer for his handling of Egyptian finance. For success in this case will mean the raising of the moral plane of Egyptian life, and the leading of a whole people some way towards fitness for that national independence which all peoples desire for themselves, and which all who would do as they would be done by are anxious to accord.

Some travellers, noting the excellent management of the Egyptian prisons under Coles Pasha, hastily assume that the whole moral machinery of the country is excellent. But the simple fact that 1,700 prisoners had lately to be released unconditionally, with unexpired sentences, because of the sheer overcrowding of the jails, is a sufficient reminder that no amount of wisdom in the mere management of prisons can avail to check crime outside.

At the present moment, however, it is with a good deal of anxiety that the friends of Egypt look forward to the operation of the newest machinery for the repression of native crime. This is the law of 4th July, 1909,* by which local commissions of officials, judges, and notables chosen by lot, are to be empowered to pick out for deportation notorious bad characters who are believed to have committed crimes but cannot be convicted of them. If not previously convicted they are to be put upon bail under police surveillance, and upon failure to find bail or breach of regulations they will be liable to deportation. This will consist in removal, with their families, to the Kharga oasis, where they will get houses, and land to cultivate, but will be compelled to remain in the place.

Properly safeguarded, the experiment of segregation, if duly prolonged, may work well; but it is obviously hazardous ; and a similar plan was officially condemned by Sir Eldon Gorst so lately as last year. A very grave objection lies against the course of making deportation depend upon administrative order and not judicial sentence.† In the former case there is no open trial, and no sort of security for justice. To such exceptional measures the Egyptian authorities believe themselves to be driven by the increase of crime and the failure of the deterrent and punitive machinery. It is a notable confession, savouring somewhat of despair. Arbitrary measures can be carried no further; and if this fails to secure any great reformation, the British authorities in Egypt must be driven to realize that the only way to reform a morally backward people is by a sound system of education.

September, 1909. JOHN M. ROBERTSON.

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* Egypt, No. 2 (1909).

† A further serious objection arises against the practice of making a heavy pecuniary "guarantee" or bail the alternative to immediate deportation. In a number of cases already heard, bail has been put at sums varying from 200*l.* to 1,000*l.* Hardly any of the suspects, of course, can find such security, and their deportation takes place at once. See the *Egyptian Gazette* of August 30, 31, and September 1. According to the latest information, no provision had been made for deported suspects at the Kharga oasis as late as the end of August.

THE ADMINISTRATION OF JUSTICE IN EGYPT.

AMONG the reforms for which Lord Dufferin was instructed by Earl Granville to prepare the way in Egypt, on the occasion of his mission to that country in November, 1883, was "the establishment of an improved system of justice for the natives." In the course of the past quarter of a century, considerable benefits have accrued from changes initiated by Lord Dufferin, and from later changes introduced by the legal assistants of Lord Cromer during his Consul-Generalship. For all that, the present state of affairs is admitted by the British authorities themselves to be extremely unsatisfactory.

"The judicial machinery which time and international rivalry have built up in Egypt"—to adopt Lord Cromer's description of it—is one of the most grievous of the scandals for which British administration in Egypt is responsible; but, unfortunately, Sir Eldon Gorst, if his opinions are accurately expressed in his Annual Report for 1907, the only one yet published,* is as little inclined as was his predecessor to accept that responsibility or to take any effective steps towards overcoming acknowledged evils. "No radical change seems to be called for," he there wrote, "and the best course is to continue steadily to introduce improvements into the existing system, paying special attention to those parts which seem most in need of reform."—(Parliamentary Papers, 'Egypt, No. 1, 1908,' p. 23.)

Ten years ago there were grounds for hoping that this judicial machinery, and the other appliances for maintaining public order in conjunction with it, had been so far developed on satisfactory lines as to need no more than honest working, and honest supplementing by such additions and improvements as experience suggested. But the past ten years have been years of decadence.

In the following pages, attempt will be made to show that much more than piecemeal and patchwork "improvements" on present methods is necessary, and that these "improvements," unless accompanied or superseded by complete overhauling and, to some extent, reconstruction of the judicial machinery now provided for the Egyptian people, are more likely to be harmful than to be serviceable to them.

* This was written last winter. Mr. Fox Bourne died on February 2nd, 1909.

I. The Old Materials.

Despotic Institutions.

When, in the autumn of 1882, the British Government was arranging for "the re-organisation of Egypt" on lines which, it vainly hoped, would render unnecessary, after a few years, the British occupation that had shortly before been brought about, Sir Edward Malet very properly insisted that it was "of the highest importance that the Khedive's Ministers should press on the work of establishing Native Courts of Justice in which the law will be fearlessly and equally administered." He pointed out, moreover, that, however essential it might be for a "strong Government" to be established in lieu of the faulty oligarchy which had broken down in Arabi's hands, no Government could be really strong, or more than "simply building for ever on foundations of sand," if its chief intention was "to punish acts and even opinions adverse to its policy and aims," and to do this by means of a disciplined and obedient army, and a corps of high officials who will execute the orders they receive without question and without hesitation." "Such a system," he frankly declared, "possesses no guarantee of durability, and is odious in itself. It is the continuation of the system of government which existed under Mohammed Ali and under Ismail Pasha. Yet, until justice is administered in Egypt as it is administered in Europe, there is no escape from the system."—('Egypt,' No. 2, p. 1.)

Like many other able diplomatists, Sir Edward Malet failed to recognise the inexpediency, if not the impossibility, of forcing upon people as different from Europeans as are the Egyptians, the summary adoption of principles and practices slowly developed in Europe in accordance with the peculiar requirements of its own social organisations. Lord Cromer erred in another direction. In disregard of the more or less impracticable projects suggested by Sir Edward Malet, and elaborated by Lord Dufferin and others under Lord Granville's instructions, he followed the example of earlier "benevolent despots" in Egypt and—while allowing great improvements to be made in the administration of justice, for which hearty praise is due to the reformers—to a large extent perpetuated the Oriental methods that had worked so disastrously under the rule of Ismail, Mohammed Ali, and their forerunners.

Besides the old Native Tribunals—as, for want of a less inaccurate term, they must be called—which principally and almost exclusively concern us here, three other institutions intended to assist in the ad-

ministration of justice in Egypt were in operation, and to some extent competing with one another, at the time of the British occupation. These were, severally, the Sharia Mehkemehs, or Religious Courts, dating from the Arab conquest of the country, which dealt with all questions affecting the personal status of Mohammedans, such as marriage, divorce, and succession, according to the precepts of Koranic law; the Consular Courts, which were responsible for the punishment of criminal offences committed by citizens of the various foreign nations possessing Capitulations from the Porte as Suzerain Power in Egypt; and the International or Mixed Tribunals, to which, since 1876, have been referred all civil actions between foreigners of different nationalities, or between foreigners and natives, together with some other matters, such as the trial of petty offences (contraventions) by foreigners.

The Sharia Mehkemehs.

With the Mehkemehs—controlled, with the assistance of the Grand Mufti, by the Grand Cadi, who is represented in the provincial centres and smaller towns by cadis supposed to be duly qualified for their work — the British authorities have, for the most part, discreetly interfered as little as possible. Lord Cromer's remarks in his Annual Report for 1897 indicate their defects. He said :—

"The quasi-religious character with which the Moslem public invests these Courts has hitherto precluded any attempts at reform. Ultimately complaints became so rife that it was resolved to reorganise the procedure, to institute a rigorous system of inspection, and to make no new nominations of judges who had not a diploma from the University of El Azhar or from the Mussulman Law School (Dar-el-Olum), and who satisfied the Board of Selection as to their knowledge of law. New regulations were, therefore, presented to the Council of Ministers, and became law. The chief changes are as follows: Finality of decision is secured by the institution of Courts of First Instance, with a single appeal: the judgment is final and executory after appeal. The power hitherto possessed by the parties to reopen their cases after judgment no longer exists. Judgment by default on the non-appearance of the defendant, after due citation, is introduced. Documentary evidence is allowed as proof, where oral evidence alone was previously admitted. Registers are obligatory, in which the citation, the substance of the claim, and the judgment are entered. These registers are subject to periodical inspection. Execution of judgments is effected by the ordinary administrative authorities. The Ministry has the power of constant and rigorous inspection. The judges (cadis) are also subjected to the disciplinary control of a Commission presided over by the Minister of Justice. These are all excellent innovations, and they are admitted to be within the limits of

strict Mohammedan law. The changes have been warmly welcomed by the public."—('Egypt, No. 1, 1898,' pp. 31, 32.)

In his next year's Report, however, in support of his remark that, "unfortunately, there is in Egypt a wide gap between the conception and the execution of reforms," Lord Cromer quoted as follows from the report of Sir Malcolm McIlwraith, the present Judicial Adviser to the Egyptian Minister of Justice:—

"These Courts have displayed a marked disinclination to depart in any way from their traditional methods of procedure. As an instance of this pertinacious conservatism, I may mention the circumstance that—though the regulations provide that each case shall be conducted regularly, step by step, until its conclusion, in order that each may be disposed of in rotation, the cadis prefer to hear the statement of claims in five, ten, twenty cases, one after another, and adjourn till a future sitting for the hearing of the corresponding string of defences. It is difficult to imagine how, under such circumstances, justice can be done in any particular case, or, indeed, what security there is that the right defence will be attributed to its respective statement of claim."—('Egypt, No. 3, 1899,' p. 39.)

Similar comments are plentiful; and in his Report for 1905 Lord Cromer—after specifying other contemplated or attempted reforms, which, he said, "excellent though they are, should they eventually be carried into execution, will be of little avail unless the personnel of the Sharia Courts is improved"—wrote of some draft regulations then under consideration:—

"These regulations provide for a course of education of a liberal character, and one which would not be confined to purely religious studies. The students, it is proposed, should receive instruction gratuitously, and also a certain monthly allowance, as at El Azhar University. It is suggested that the lecturers at the school should be Ulemas of the highest standing, but that the Government should have an effective control over the conduct of the examinations. The diploma granted to those who had qualified for the position of cadi, mufti, or member of a meglis, would be assimilated to that of El Azhar. There can be little doubt that the adoption of a plan of this nature would be likely to produce excellent results; but I wish again to draw attention to the fact that, in all matters connected with the reform of the Mehkemehs and cognate subjects, the British advisers of the Egyptian Government are almost powerless to act effectively unless they not only receive the support of native public opinion, but also unless the more progressive members of the Moslem community take the initiative, and continue to urge the necessity for action."—('Egypt, No. 1, 1906,' p. 81.)

There would be more force in those strictures were they less akin to others which are abundant in the reports of Lord Cromer and many

of his assistants, and which clearly reveal a lack of tact or wisdom in their attempted performance of the almost impossible tasks assigned to them, or assumed by them, as absolute controllers of a machinery of administration which is nominally directed and worked by the Khedive and his Ministers, with ostensibly no more than friendly counsel from the British Agent and the British Advisers attached to all important offices of State.

The Consular Courts.

The same may be said, perhaps with even greater truth, about the relations of the British authorities with the Consular Courts in Egypt, except that the latter, however faulty, and in some respects unequal to the duties devolving upon them, are strong enough to hold their own against the utmost efforts of outsiders either to weaken or to improve them.

These Consular Courts, and the system of consular jurisdiction from which they derive their authority, date in most cases from the middle ages, and would now be quite obsolete were it not that they still to some extent afford a valuable safeguard against that unchecked despotism of misguided British officials for which premature abolition of the Capitulations would furnish opportunity unless other conditions were also altered. For our present purpose they are sufficiently described in the following extract from Lord Milner's 'England in Egypt,' which, if needlessly severe in some of its terms, does no more than emphasise dangers that often result in grave abuses :—

"In Egypt it is a matter of well-established usage that a foreigner committing a criminal offence (with the exception of very trifling offences which may now be tried by the Mixed Tribunals) is tried by his consul or, if his consul is not competent, by the competent court of his own country. In Egypt, too, the principle of inviolability of domicile has been interpreted in a manner which not only makes the arrest of criminals difficult, but places the greatest obstacles in the way of the Government in its attempts to obtain proof of breaches of the law. Before a foreigner's domicile can be entered—and his domicile is taken to include all his premises—his consul or some representative of his consulate must be present. But in hundreds of cases the consul takes good care to be out of the way until the criminating articles—the stolen goods, or the contraband tobacco or hasheesh, or whatever else they may be—have been carefully removed. A foreign ship in an Egyptian port is as inviolable as a foreigner's home on land. There have been innumerable cases in which a vessel, known to contain contraband, has had to be watched day and night for many days together by the coastguards until a consular agent could be got hold of in whose presence they might

board her. When the indispensable official has at last arrived, the ship has simply put to sea, only to return and play the same game over again in a more convenient spot until she has finally succeeded in landing her cargo.

"Another common instance of the abuse of the Capitulations is that of a foreign criminal, or gang of criminals, taking refuge upon the premises of another foreigner of different nationality. Here at least two consular agents are necessary before the police can act—one to legalise the infraction of domicile, the other to legalise the arrest. But, if the criminals themselves are of different nationalities, three, four, or even more consulates may have to be represented. Now, it is difficult enough to get a single consulate to move; to obtain the timely co-operation of two or three of them is next door to an impossibility.

"And the difficulty of arresting a criminal is not greater than that of ensuring his proper punishment when arrested. It is a serious evil, in any case, that foreign criminals should not be amenable to the courts of the land, even where natives or the native Government are the victims of their criminality. But the nuisance becomes intolerable where the foreign authority, which is substituted for these courts, allows itself to be biassed in favour of the criminal because he is a fellow-countryman. An English miscreant, if handed over to his consular authority, is pretty certain to meet with the punishment he deserves. The English consular jurisdiction in Egypt extends to all crimes, and the consuls are, in their capacity of judges, little disposed to show leniency to their fellow countrymen.* But other consular courts have either a more limited jurisdiction or, even when competent to deal with every sort of offence, are liable to be overruled by Courts of Appeal in their own country. Such Courts of Appeal are in most cases obliged to decide upon depositions without hearing or seeing the witnesses, and are naturally ignorant of local conditions. They are thus hardly in a position to form a good judgment, even if their disposition is excellent. But, unfortunately, the impartiality of foreign judges trying their own countrymen for offences committed against Egyptians is not always unimpeachable.....

"It would be hard to exaggerate the amount of injustice, or the hideous administrative confusion, arising from this state of things. But the immunity often accorded to criminals is not the most serious, though it is the most sensational, evil resulting from the abuse of the Capitulations. Of more far-reaching consequence are the obstacles they interpose to every kind of administrative reform, and to the general march of progress. Where would the growth of civilisation be without the power of creating new offences? Step by step, as the development of the public conscience condemns certain

[* The patriotic assumption in these two sentences has not always been warranted by facts.—ED.]

acts as immoral, or experience shows them to be injurious to the general interest, the legislature follows and makes them punishable. But the Capitulations oppose a solid barrier to this process, alike as regards the suppression of vice and the repression of nuisances. Whether it be a question of public morals—such as the closing of gambling hells and houses of ill-fame, or the control of the sale of intoxicating liquors, or a question of public convenience—such as the preservation of a canal bank, or the enforcement of the most necessary sanitary rules, the same difficulty presents itself. From the prevention of false coining to the regulation of a cabstand, it is always the old story. No doubt, the Government is free to make the necessary laws, but, as long as the penalties contained in them are not applicable to foreigners, what is the use? It would simply be giving a profitable monopoly of lawlessness to the foreigner at the expense of the Egyptian; and in matters of this kind it is precisely the low-class foreigners, with whom the country swarms, who are the principal offenders. It is they who are the false coiners, who keep the gambling-hells, the liquor shops, the disorderly houses: it is they who build upon canal banks, or throw their refuse into the public streets. The Egyptian courts cannot try them, nor is it certain that their own courts, even if willing, would be competent to do so, for the offences in question are offences by virtue of Egyptian municipal law, and foreigners have the right to be tried not only by their own courts, but by their own laws.....Innumerable are the embarrassments of a weak country like Egypt when circumstances have deprived it of one of the most essential attributes of sovereignty." —(Pp. 39-43.)

The Mixed Tribunals.

Happily no such objections can be raised against the Mixed Tribunals, which owe their origin to the far-sighted intelligence of Nubar Pasha, who, in February, 1876, after several years of appeal and expostulation, persuaded the Powers, then scandalously mismanaging Egyptian affairs in the interests of European financiers, who traded on the vanity and extravagance of Ismail Pasha, to agree to an arrangement which, though by no means perfect, has, with but slight alterations, and generally at quinquennial intervals, been several times renewed down to the present day. To quote again from Lord Milner's—on such subjects—lucid and impartial summary:—

"Previous to the establishment of these tribunals all suits against foreigners had to be brought before their respective Consular Courts, and these courts, as we have seen, are often animated by anything but a judicial spirit. But, when the foreigner himself had an action to bring, he entirely declined to go before the Native Courts. Alleging that no justice could be had in that quarter, he would appeal to the Consul-General of his country to get his claim settled by diplomatic action. This was more particularly the

case when his claim was against the Egyptian Government, and such claims were legion. It would be impossible to give any idea of the unscrupulousness with which foreign Diplomatic Agents, especially during the reign of Ismail, used their influence to obtain from poor weak Egypt the payment of the most preposterous demands.....

"All this was no fun for the country, which had to pay the piper. Fortunately for Egypt, it also became intolerable to the Europeans themselves. The better class of residents and merchants found that the difficulty of obtaining justice, which arose from the multitude of petty and conflicting jurisdictions, far outweighed any advantages they might derive from being themselves amenable to their own consuls. The Egyptian Government was thus encouraged to propose, and after eight years of weary negotiation enabled to carry, with the consent of all the Powers, a law creating a single strong international jurisdiction, to supersede for the great majority of cases the existing Consular Courts. The new Tribunals were made exclusively competent to try all suits in which the plaintiff and defendant were of different nationalities—that is to say, all suits between natives and foreigners as well as between foreigners not belonging to the same country; and they were authorized to deal with actions concerning real estate, even between persons of the same nationality. Only cases of personal status, such as questions of marriage, inheritance, &c., were excluded from the jurisdiction. But in criminal matters it was confined to offences committed against the Tribunals, such as contempt of court or forcible opposition to the execution of judicial decisions, and to breaches of certain petty police regulations.

"The composition of the Tribunals was partly native and partly foreign; but foreigners were everywhere in a majority—in the proportion of four to three in the Courts of First Instance, and of seven to four in the Courts of Appeal. Among the foreign judges the United States and all the European Powers except Spain and Portugal—which, however, have subsequently contributed members to the Courts—were represented. To the Austrian Lepanna, the first President of the Court of Appeal, a jurist of eminence and a man of the highest character, belongs the memorable honour of having been the first to direct the young institution in the right path.....

"But, while the creation of the Mixed Tribunals certainly tended to improve the administration of justice in Egypt, it evidently did not simplify the political constitution of Egypt. The Tribunals were a new stronghold of foreign influence, a new surrender of the rights of the Native Government. They might nominally be the courts of the Khedive, who appointed their foreign members—although on the proposal of the Powers. But they were in reality foreign courts, deriving their authority from outside; and they have not hesitated to exercise that authority against the Native Government whenever they thought it right to do so. Add to this, that they naturally

enjoy an amount of influence and respect which could not attach to the numerous petty tribunals for which they were substituted. Judicially far better, they are at the same time politically far more formidable, than the authorities they have supplanted."—(Pp. 43, 45, 48.)

The opportunities afforded by the composition and the high repute of these institutions for political interference with the so-called Egyptian Government, and especially with British control over it, were frequently —as regards non-British interference, at any rate—animadverted upon by Lord Cromer, the result of his expostulations being that the aggressive tendency of the Mixed Tribunals was more than once to some extent crippled. But, on the whole, and without material change, they have very satisfactorily carried out the intentions with which they were started over thirty years ago.* They have also, by example, done much to promote the improvement of the National or Native Tribunals, into the working and development of which during the past quarter of a century we may now proceed to inquire somewhat more closely.

Provincial Misrule.

There was not only room but urgent need for all the improvement that could be effected when the British Government, while chiefly anxious to secure for Englishmen and other Europeans full justice, and indeed more than justice, in their dealings with the people in Egypt, also pledged itself to set the Egyptians in the way of dealing justly with one another.

Whatever possibilities of good there might be in the machinery for the administration of justice which had been clumsily put together, and often patched up, in the generations and centuries before the time of Ismail, that machinery had come to be nothing but an instrument of lawless tyranny and shameless oppression in the decade or so immediately preceding the British occupation. The Mudirs and, under them, the Mamurs and Omdehs—that is, the governors of provinces, the superintendents of provincial sub-districts, and the mayors or headmen of villages—were the recognised agents of the Khedive and his counsellors; and these latter being perennially at their wit's end to

[* It is unfortunately necessary to modify this summary at two points. In the first place, the "aggressive tendency" of the Mixed Tribunals was so thoroughly curbed by Lord Cromer that they became entirely subservient. In the second place, the delays in these courts are of the most scandalous kind. A counsel, Mr. Mafsud, formerly a judge in the native courts, who had the hardihood to complain of these delays, was lately suspended for three months from practice. There would be a great economy in judicial strength if fewer judges were to sit together.—ED.]

obtain money enough to satisfy the requirements of foreign Shylocks and their own greed, matters were brought to a condition of which the descriptions of contemporary English officials are probably not exaggerated. Mr. F. S. Clarke, for instance, who was at that time Second Secretary to the British Agency at Cairo, thus reported in 1889 as to the state of affairs in 1882 :—

"The Mudirs were allowed to commit acts of oppression and illegality unrestrained and unpunished by the central authorities. In their hands lay the power of administering justice, of collecting the taxes, and of providing men for the corvée and for the army. The Mudirs were omnipotent in the provinces. They were, indeed, responsible for everything that occurred, but, provided no serious outbreak took place and the taxes came in regularly, no questions were asked and their despotic authority remained unchallenged. The one principle of government was the courbash, arbitrary imprisonment and, at times, the application of torture.

"It is impossible to obtain statistics as to the amount of crime which took place prior to 1882, as much of it was never reported. At that time crime committed within some mudirieh was never heard of beyond its limits. It seems, however, that a good deal of brigandage, or gang robbery, took place, and that blackmail was frequently paid by the sheikhs to bands of robbers who infested the neighbourhood of outlying villages. The present Native Tribunals had not then been called into existence, and the religious law was powerless to prevent disorder. Yet the military and police force at the disposal of the authorities was both large and costly. In the days of Ismail Pasha, and up to the commencement of the military disturbances, an army numbering 12,000 men was distributed over Upper and Lower Egypt. This army was, however, composed for the most part of men who feared and hated military service beyond all things; of men who had probably been brought to their regiments in chains after having been unjustly recruited, and whose subsequent training by uneducated and incompetent officers had tended but little to render them either efficient or well-disciplined. The police force consisted of over 6,000 men. Of these the gendarmerie was composed of soldiers who had served in the army, but who had now fallen into a lower state of discipline and training. The police itself was recruited from the dregs of the population. Badly officered and irregularly paid, this force was not only not a protection to the country, but caused considerable distress to the village populations by its opportunities for plunder and the exaction of bribes. The towns of Cairo and Alexandria had, it is true, a highly paid police force, but their efficiency was not great. Their conduct during the massacres at Alexandria showed clearly the little reliance that could be placed on their services.

"The system by which native justice was at this time dispensed was deplorable. The cadis, or religious judges, took cognizance of all questions relating to marriage, guardianship, property, &c., while the Tribunals which had gradually sprung into existence had jurisdiction over other matters of a civil or commercial nature. But the codes and procedure of these tribunals were not fixed. The judges who presided had no special legal training: their characters and qualifications in many cases scarce fitted them for the responsible duties they were called upon to perform; and their decisions were based on no existing laws or regulations. It is not surprising that under such circumstances irregular payments to judicial officials were frequent, and that suitors in an action failed to distinguish between the acceptance of bribes and the due exaction of legal court fees.

"The power of arrest and imprisonment lay in the hands of officials who incurred no responsibility for illegal detention, and over whose acts no check of any kind was kept. The prisons were crowded with persons who, owing to the procrastination and inefficiency of the tribunals, had been in custody for months and even years without trial or examination, and whose incarceration, as often as not, had been due to charges of the most trivial nature. With no gaol delivery, no fixed assize, no law to compel the official in charge of a prison to send up, within a given time, the accused for trial, it may be readily imagined how authority was abused and how uncertain was the justice which prevailed throughout the land.

"Of the state of the prisons at this time it is impossible to give too terrible an account. Colonel Chermside inspected the provincial prisons of Lower Egypt in 1882, and his report shows that not only were they greatly overcrowded, not only was the food wholly inadequate and the general suffering very great, but that the grossest abuses prevailed owing to the unrestrained powers of punishment vested in irresponsible officials. The bastinado was applied but too frequently, and the use of stocks and torture was not unknown. No distinction was made between the different categories of prisoners. The condemned criminal and the innocent man awaiting his trial were herded together, deprived of sufficient food, of proper clothing, and with no prospect of release or trial. No supervision was exercised over the prisons scattered throughout the country. Some were under the authority of the Ministry of the Interior, others under that of the Ministry of Justice. The number was quite unlimited, and every large village boasted of its prison or lock-up.

"Mr. Beaman, who was then attached to Her Majesty's Consulate-General at Cairo, and who accompanied Colonel Chermside on his tour of inspection, concluded his observations on the prison system as follows:—'No report can convey the feeblest impression of the hopeless misery of the mass of prisoners, who live for months like wild beasts, without change of clothing, half starved, ignorant of the fate of their families, and bewailing their own.

They look forward to the day of their trial as synonymous with the day of their release, but the prospect of its advent is too uncertain to lend much hope to their wretchedness. From the moment of entering the prison, even on the most trifling charge, they consider themselves lost. The one power that can release them is money, and they do not command it. It is impossible for them to guess at the time when a new official may begin to clear off the cases in his district, or when the slow march of administration may reach them. It may be weeks, it may be months, and it may be years; many of them have long ceased to care which."—('Egypt, No. 4, 1889,' pp. 38-40).

When due allowance is made for the inevitable tendency of would-be reformers, whether prompted by the highest philanthropy or by lower considerations of policy, to regard in the most unfavourable light the state of things which they have sought to amend, that account of the corruption and degradation into which, before the British occupation of Egypt, such institutions as existed for the administration of justice had fallen, shows how great was the need for the improvements that Lord Dufferin was instructed to initiate, and Lord Cromer undertook to carry out.

II. Innovations and Reconstructions (1882-1890).

The Native Tribunals of 1884.

By a Khedivial Decree, dated 14th June, 1883, and issued at the instigation of Nubar Pasha and his English advisers, provision was made for the establishment in Egypt of Native or National Tribunals to supersede, or at any rate to improve upon, where they could not altogether displace, the former attempts at judicial institutions. There were to be five Courts of the First Instance in Lower Egypt, and these were constituted in February, 1884, sitting severally at Cairo, Alexandria, Benha, Mansura, and Tanta. Three other Courts of First Instance were proposed at the same time for Upper Egypt—at Beni-Suef, Siut, and Kena; but these were not opened until 1889. It was also appointed that there should be two Courts of Appeal, one at Cairo, and the other at Siut; but the latter was afterwards dispensed with. For the guidance of these tribunals, moreover, new codes dealing with civil and mercantile relations, a Penal Code, and Codes of Procedure, civil and criminal, were promulgated in November, 1883.

Whatever its merits may have been, the machinery was too elaborate in its attempt to adapt French methods and principles to native traditions and requirements for its smooth and successful working to be possible at once, or at any time without important

modifications. Reporting on the subject in February, 1885, Sir Raymond West, who was for a short time Procureur-Général, wrote :—

"It must be borne in mind, in forming an opinion of the work of the Tribunals as Criminal Courts, that they fill the place not only of the higher courts, but of the magistracy also, in England. Every criminal complaint may be presented to the tribunal of the district or to a police officer. In either case it is sent to the Parquet, or to a group of official lawyers representing the public at the Tribunal. The Parquet makes an examination of the case, and collects through the police such evidence as may be available. It then either dismisses the case, or, according to the character of the offence disclosed, commits for trial, or hands it over to the Juge d'Instruction. The latter functionary makes his own 'instruction,' or preliminary investigation, and after this the case, if not dismissed, is brought before the Tribunal. A complainant direct to the Tribunal must acquaint the Parquet with his evidence three days before the hearing. It is obvious that this system is wanting in directness and simplicity. It places justice at rather too great a distance from those who have to complain only of petty offences, and so tends to prevent complaints in such cases. But it certainly gives to the accused the safeguard of a careful examination of the evidence before he is even put on his trial, and is, on the whole, an immeasurable advance on the chaos of crime and chance and arbitrary punishment which it has superseded. In giving effect to the fine distinctions of the Penal Code and the elaborate provisions of the Code d'Instruction Criminelle, the Courts have not had the assistance and support of a body of officials familiar with the laws from their earlier days as in a European country. Allowance must be made for this cause of error and delay in judging of the work actually done, and allowance must also be made for the obstructive effect of a general apathy and ignorance amongst the population. But, further, the admission of the 'partie civile,' as a virtual plaintiff seeking damages in every stage of a criminal trial, is a source of complication which greatly prolongs the proceedings, and, owing to the different principles which must be applied in dealing with a case in its civil and its criminal aspect, one that may well embarrass inexperienced judges, however great their goodwill and ability." ('Egypt, No. 15, 1885,' p. 81.)

Writing in the same month of February, 1885, Mr. Sheldon Amos, a judge in the Court of Appeal, with longer Egyptian experience than Sir Raymond West's, among other "recommendations founded on the experience of last year," made the following suggestion, which is nearly as much in need of being acted upon at the present as it was twenty-four years ago :—

"Raising the status of the judges negatively, by not needlessly interfering with them, and positively, by finding ways of raising their rank above that

of policemen and clerks. This degradation of the judicial office is borrowed rather from France than from England or India.

"The Egyptian native judge is timid and disposed to shrink from responsibility, and is only learning habits of judicial independence. There is still a practice of the Egyptian Government, and pursued by English *officials in high places*, of publicly complaining of, or of privately remonstrating against, judgments that are adverse to Government departments. This is a bad example to set to private suitors, and must prevent a spirit of true judicial independence ever being acquired."—(*Ibid.*, p. 59).

Lord Milner called attention to another fault in the arrangements of 1884 when he wrote in 1891 :—

"The minimum number of judges was fixed at five for a Court of First Instance (besides as many as four assistant judges), and eight for a Court of Appeal. As a matter of fact, this minimum was, from the first, largely exceeded, the earliest Courts of First Instance consisting of ten, eight or seven judges, while the Court of Appeal started with fourteen—but of these four were Europeans.....It would have been better to restrict, as far as possible, the judicial body. The finances were at a low ebb, and, if there were to be many judges, it followed that, as a rule, they must be badly paid, and proportionately open to temptation. Moreover, the available material was scanty. There were far too few competent men in the country to man eight Tribunals of First Instance with about a dozen judges each; to say nothing of nearly twice that number in the Court of Appeal.....Of the first occupants of the Native Bench only about one out of four had had a regular legal training, and even of these a considerable portion were lawyers in name rather than in fact. Nor, if the choice had ever been so large, could there at that time be any certainty that the right man would be selected. The judgeships were simply regarded as so many opportunities for giving worthy people, whom it was desired to benefit, a modest income."—('England in Egypt,' p. 268).

Similar, albeit more cautious strictures on the Native Tribunals in their earlier stage appear in a dispatch addressed on 24th November, 1885, to Lord Granville by the late Lord Northbrook, who had been sent to Egypt as a Special Commissioner, chiefly on financial business, and who thus reported on some other matters connected with the administration of justice :—

"The changes which have recently been introduced in the administration of the police have, in my opinion, been in the right direction. The Mudirs will have full power over the police in their respective provinces, as is absolutely necessary for the security of the country; but the discipline and promotion of the police will be under their own officers, and the force will be periodically inspected by the officers in charge of the three districts into

which Egypt is divided for police purposes.....It is generally agreed that none but old soldiers should be enrolled in the European police, and I have suggested that regulations should be made to provide that the men should acquire a colloquial knowledge of Arabic. The general concurrence of opinion points to the advantage of recruiting the native police from the ranks of the Egyptian army, so that the recruits may have some previous knowledge of drill and have acquired a sense of discipline.....

"During the last few months there have been a considerable number of cases of gang robbery in Lower Egypt. This is partly attributed to the cessation of the arbitrary system which used to prevail of summarily disposing of bad characters by sending them to the Sudan without any regular trial—a power which was frequently used to commit the grossest injustice—and to the abolition of the use of the courbash, by means of which evidence was habitually extracted both from persons accused of crimes and from witnesses. The Egyptian Government, under the presidency of Sheriff Pasha, deserves, in my opinion, great credit for having cordially carried out this great reform at the instance of Lord Dufferin; but it is not surprising that these changes should have weakened the power of the local officers, and thus have contributed to the increase of crime.

"The present condition of the prisons must also tend in the same direction. Their state has been greatly improved; they are now fairly clean and, generally, not overcrowded. But there is no legal code of prison discipline, nor any power of setting criminals to hard labour unless sentenced to *travaux forcés*. They are simply kept in confinement, in association, in large airy rooms, with a sufficient supply of food. It has frequently been represented to me, and indeed it is obvious, that such a system of punishment cannot exercise any deterrent effect upon criminals of the lower classes."—('Egypt, No. 15, 1885,' pp. 27-30.)

From the above quotations a fair notion can be obtained as to the purport and value of the reforms attempted, and to some extent effected, after Lord Cromer's appointment as British Agent in Egypt; and while he was himself too much occupied with financial adjustments to do more than look on and sanction or condemn the proposals either of Egyptian officials or of the impetuous Englishmen who were sent out to assist him in his labours. But a few details in further explanation of the situation may here be given.

Lord Dufferin's Intentions.

In Lord Dufferin's scheme for the regeneration of Egypt under British guidance there appears to have been no thought of any such interference with the management of affairs by the Khedive and his Ministers as would seriously lessen their responsibility and deprive them of

their independence. They were told that they must stand aside while the representatives of Great Britain carried out the military, financial, and other operations which they considered necessary to fulfilment of the international obligations of Egypt, and that they must regulate their conduct of the internal affairs of their country in conformity with the requirements of the "occupying" Power—as, for instance, in the case of the abolition, as far as possible, of the courbash and the corvée, and in the administration of justice among the natives themselves as well as in their relations with foreigners. But the actual carrying out of the new rules laid down, or the old ones insisted upon, was left to the Khedive's Prime Minister and his colleagues and their subordinates, all of whom were, in practice as well as in theory, the servants of the Khedive, although not a few were foreigners and some were Englishmen.

It was on this understanding that Sheriff Pasha retained office and co-operated loyally with Lord Cromer until his opposition to the British Government's policy regarding the Sudan led to his resignation; and thereupon his place was taken on the same assumed terms by Nubar Pasha, who, as chief promoter of the already established Mixed Tribunals, might have been expected to be a safe ally and agent in bringing about other judicial and legal reforms. The police, however, being practically a branch of the army, and, like it, in an exceptionally disorganised condition at the date of the British occupation, was from the first especially looked after by the military authorities; and Colonel Valentine Baker, known as Baker Pasha, was allowed to make luckless experiments in the collection of a cosmopolitan rabble called a gendarmerie, which ignominiously distinguished itself in the attempted relief of Tokar.

Mr. Clifford Lloyd's Mission.

Five months before that disaster, moreover, in September, 1883, Mr. Clifford Lloyd had been very unfortunately sent out with a sort of roving commission as Director-General of Reforms. Lord Milner's cynical remarks on this appointment are perhaps not too severe. He says:—

"'We don't know what we want you to do, but go and do something,' were practically the instructions given to Mr. Lloyd, who had gained a considerable reputation for strength and courage as a resident magistrate in Ireland. No vaguer mission was ever entrusted to any human being. But, if the mission was vague, not so the missionary. There is reason to believe that Mr. Lloyd, who had never previously been in Egypt, made up his mind

as to everything that ought to be done within the first month after his arrival. .....His enthusiasm for reform was undoubted. His power of work, and of making others work, was marvellous. His manner carried away, on first acquaintance, even the least impressionable people. But he was deficient in judgment and circumspection. He was inclined to rush everything. He had not the least sympathy or patience with men of opposite opinions and character to himself. These were defects peculiarly unsuited to a situation of great delicacy, in which strength itself might be weakness unless coupled with a certain amount of tact. Mr. Lloyd, to put it plainly, was the proverbial bull in a china shop."—('England in Egypt,' pp. 88, 89.)

Mr. Lloyd had not been more than three months in the country when a change of Ministers took place; and he consented to surrender his title of Director-General of Reforms, and to accept office instead as Under-Secretary of State for the Interior under Nubar Pasha, whose return to power, or the semblance of it, in January, 1884, he hailed as the commencement of a new era. Before the end of April, however, so much friction had arisen between him and his Egyptian colleagues that Nubar threatened to resign unless he was relieved from the presence of the troublesome Irishman. Mr. Lloyd, being also at loggerheads with some of his English colleagues, was consequently recalled, and he left many complications behind him which were overcome only with much difficulty and waste of time.

There was little or no permanent result of his labours except the setting up of the Ministries of Justice and Public Works as separate—but scarcely distinct—branches of the Egyptian service from the Ministry of the Interior. The former arrangement, at any rate, was of very questionable value. Rightly or wrongly, and perhaps as a necessity of the conditions under which Egypt is now controlled by the British Government, and hampered by the Capitulations, its judges, and particularly its native judges, have never been able or allowed to assert such a measure of independence in their relations with other departments of State as is recognised in our own and other countries; and much confusion and apathy or negligence, even when not aggravated by jealous rivalries, have ensued in the detailed working both of the Ministry of the Interior and in that of Justice.

Subsequent Developments.

The decisive quarrel between Nubar and Mr. Lloyd grew out of the latter's attempts at police reform; but this question had wide ramifications. The Mudirs being, before the institution of Native Tribunals, practically the only judges in their respective provinces, and subsequently retaining part of their magisterial functions, were also

responsible for management—with the assistance of their subordinate Mamurs, Sheikhs, and Omdehs—of the nondescript police force which was supposed to maintain order at home while the so-called army was employed in other ways. But in 1883 the task of reorganising the police had been entrusted to Baker Pasha, until it was found that he devoted himself almost exclusively to the bringing together of the quasi-military force or gendarmerie which showed its worthlessness in encounters with the followers of the Mahdi. Thereupon Mr. Lloyd, during Baker's absence in the Sudan, attempted to do away with such police machinery as remained in the provinces, and to procure a more efficient body of men, detachments of whom were to be placed at the disposal of the Mudirs for the detection or prevention of crime, but to be under the orders of an European Inspector-General and his staff. The proposal was not unreasonably resented by Nubar, who urged that, the Mudirs being the responsible governors of the provinces, it would be impossible for them to perform the duties assigned to them if all their authority was to be undermined.

His arguments so far prevailed that the old order of things, disorderly as it was, continued for a few years longer, with no material change except that, an alarming increase of brigandage having occurred at this time, partly as an incident of the unfortunate meddlings with the Mahdi and his sympathisers, and the undeveloped new Native Tribunals not being found competent to deal with it, an important inovation was made at Nubar's suggestion. This was the introduction of a system of Special Commissions, in which the Mudir of any province seriously disturbed by crimes of violence was president of a sort of court-martial, empowered, subject to the check of the Minister of the Interior, to deal summarily with such cases in lieu of their being sent up for trial by the Native Tribunals. The arrangement may have been allowable as a temporary expedient, but it was open to grave abuses, and it prolonged the legalised lawlessness that the British Occupation was intended to abolish.

Meanwhile the Native Tribunals, as far as their dominating surroundings allowed, and in spite of the reactionary Special Commissions, were at any rate acquiring experience. Writing in April, 1889, on this and kindred subjects, Mr. W. S. Clarke reported to Lord Cromer:—

"These tribunals have now been in existence for over five years. Although a marked improvement on the former system of administering justice, the progress made by them has not been satisfactory. The central

Department has been left entirely in native hands, and great difficulties have necessarily arisen in the introduction of such institutions. There was no class from which the judges could be chosen. A native Bar did not exist, and few, if any, of those who were first selected for the Bench had had any previous legal training. The codes were new to the courts, and the arrears with which they had to deal were very great. The appointment of some European judges has been a wise measure, but the difficulty they naturally experience in thoroughly acquiring the Arabic language has somewhat detracted from their utility.

"A report on the working of these tribunals, which has just been drawn up by the Procureur-Général, gives promise for the future. During the last twelvemonth a great number of cases which had been in arrear for many years have been cleared off, and the administration of justice has been much improved as regards expedition. Greater confidence seems also to be placed in these courts, as native subjects now no longer sell their claims to Europeans in order that they may be tried by the International Tribunals.

"Measures have been taken to prevent the arbitrary arrest of persons, and their detention in prison for long periods while awaiting trial. A decree issued in November, 1884, is virtually the Habeas Corpus Act of Egypt. It enacts the punishment of officials for not reporting detention in prison, or for receiving a prisoner without a warrant. It provides for the examination within a given time before a competent tribunal of all accused persons, and it renders the director of a prison liable to prosecution if a prisoner is detained longer beyond the expiration of his sentence.

"The prisons have undergone thorough reform. They are now in charge of an English Director-General, acting in one of the departments of the Ministry of the Interior. A large number of prisons have been suppressed, while many small gaols have been handed over to the police as lock-ups. Prisoners are now registered, and illegal detention has been made impossible. The overcrowding has ceased, and steps have been taken to improve the ventilation, the lighting, and the general sanitary condition of the prisons. Prison duties and remunerative labour have been introduced, and the punishments inflicted for offences have been modified and the power of inflicting them placed in proper hands. A prison has been set apart for condemned criminals, and convicts are now employed in useful labour.....

"A complete change has also taken place in the police force. A central department has been established, which is attached to the Ministry of the Interior. English inspectors and English officers have been appointed, who have instilled discipline and order into the force. The Police Regulations are now clearly defined and well understood. Crime committed in the provinces is at once reported to head-quarters. A small detective force has been formed; five brigades have been instituted, and public order is every-

where maintained with an efficiency which reflects the greatest credit to the officers in charge of this department. It must not be forgotten that these changes have taken place notwithstanding a large reduction in expenditure and in the number of the force employed."—('Egypt, No. 4, 1889,' pp. 42, 43).

Though other reports are less flattering, Mr. Clarke's account may be regarded as fairly accurate. For all that, there was room for many and various improvements, and the praiseworthy intentions with which most of the changes introduced under Nubar Pasha's Prime Ministership, partly on his own initiative and partly at the suggestion of the English advisers of unequal merit who were sent out to assist Lord Cromer, were not always acted up to. In his report for 1890 the Consul-General had to point out that "the weakest parts of the Egyptian administrative system were the administration of justice and the organisation of the police," and this in large measure because there was "a want of concerted action between the Departments of Justice and the Police."—('Egypt, No. 3, 1892,' p. 25.)

Preparations for Further Reforms.

That lack of concerted action in 1890 was a survival from differences of many years' growth which had reached their climax in 1888. In the latter year, hoping to take advantage of the death of Baker Pasha, who had retained till then his general control of the police, Nubar proposed to abolish the central office at Cairo and to revert to the arrangement by which each Mudir had been complete master of the police in his own province. This proposal was not listened to, however, and an English Inspector-General of Police, more objectionable to the thwarted Prime Minister than Baker had been, was appointed to the post. In the following June, moreover, Nubar was himself replaced by Riaz Pasha, who, though he assented to the police reform, proved scarcely less obstructive, and had, in his turn, to be got rid of by the British agency, his downfall being especially the result of efforts started in 1887 for rescuing the Native Tribunals from the failure that appeared to be imminent as a consequence of their faulty commencement, and yet more of encouragement given to the Commissions of Brigandage, which had gradually usurped most of their functions and threatened to supersede them altogether.

Early in 1884 Sir Benson Maxwell, formerly an Indian judge, had been deputed—with the title of Procureur-Général or Public Prosecutor—to watch and assist in the working of the Native Tribunals. His disagreement with Mr. Clifford Lloyd led to Sir Benson Maxwell's retirement in June of the same year; and Sir

Raymond West, another experienced Indian official who succeeded him in January, 1885, held the office for a yet shorter time. Attributing the failure of Sir Raymond's "recommendations, however sound," to "the absence of diplomatic support," Lord Milner says:—

"Sir Evelyn Baring (as Lord Cromer then was), had felt obliged to give the administration of justice the go-by and to confine his attention to other matters. Hence Nubar had for several years had an absolutely free hand in all questions of this nature. The courts were manned from top to bottom with his nominees. When, therefore, complaints of the corruption and incapacity of the judges became general, when nothing was heard on all hands but criticisms of the cumbrous procedure of the courts, of the costliness and delay of litigation, and of the unreliable nature of the results, it was Nubar whom people held responsible."—('England in Egypt,' p. 112.)

Nubar appears to have been unduly blamed in the matter. But the abuses continued and grew until he was replaced by Riaz, who—though far less in favour of judicial reforms than his predecessor, and indeed, as an old-fashioned Mohammedan, believing that the Sharia Mehkemehs, and the old-fashioned despotism of the Mudirs, satisfied all the requirements of the country as regards administration of justice—tolerated inquiries and slight reforms until bolder action was insisted upon. The inquiries followed on the appointment, in October, 1887, of M. Legrelle, a Belgian, to the long-vacant post of Procureur-Général. This able jurist lost no time in making a searching examination of all the problems which it behoved him to have a share in solving; and in 1888 he submitted a weighty report, dealing especially with the Commissions of Brigandage, in which he showed so conclusively the pernicious nature of these sham tribunals that Lord Cromer was constrained to take action, and to put such pressure upon Riaz Pasha that the latter consented to their abolition in May, 1889.

More than four years before, in February, 1884, Sir Raymond West had urged that, instead of the "rough-and-ready procedure" of these Commissions, "the procedure under the ordinary law should be simplified and freed from all artifical rules which impede the ascertainment of the truth, and the free exercise of a disciplined reason on the facts placed before the tribunals for adjudication." ('Egypt, No. 15, 1885,' p. 83.) But this common-sense suggestion was not acted upon until M. Legrelle, as Lord Cromer said, "brought to light the existence of some serious abuses," which, more recently, his lordship has thus described:—

"Under the auspices of these Commissions every species of abomination had been committed. Witnesses had been tortured. Some 700 or 800

people had been condemned, and a certain number had been hung. In many cases the evidence was wholly insufficient to justify a conviction; it cannot be doubted that a good many innocent persons were punished."—('Modern Egypt,' vol. ii. p. 289.)

And Lord Cromer, in support of his statement, quoted, *inter alia*, the following from the report of Mr. Morice, an official deputed to inquire into the cases of some of the prisoners:—

"In the 126 cases examined I have never once come across any witnesses for the defence. It would therefore seem to have been generally decided that this was not of any importance. Individuals once arrested and brought before the Commission seem to have had very little chance of regaining their liberty.....Indeed, it was sufficient for one man, whose guilt was fully established, either by recognition on the part of the victim of the assault or robbery, or by the finding of stolen property in his possession, to accuse another, for this latter to be sentenced to a very severe term of imprisonment."

III. Sir John Scott's Work (1891-1898).

The scandals incident to the creation and extension of Brigandage Commissions having been exposed, and, as far as possible, put a stop to as a result of M. Legrelle's report in 1888, the next step was to procure the changes necessary to enable the Native Tribunals to do the good work for which they had been projected. To this end Mr. (afterwards Sir John) Scott, who had been an Appeal Judge of the Mixed Tribunals in Egypt from 1876 to 1882, after which he had a seat for seven years in the High Court of Bombay, was borrowed in 1889 in order that he might investigate and report upon the whole question of Egyptian judicature and practicable reforms. His masterly and exhaustive review of the questions submitted to him led to his transference to the Anglo-Egyptian service and to his appointment, on 15th February, 1891, as Judicial Adviser to the Minister of Justice with virtual authority to insist on the adoption and carrying out of the drastic reforms he had recommended. "From that time," Lord Cromer was constrained to admit, "justice began to be properly administered in Egypt." ('Egypt No. 1, 1901,' p. 47.)

The immediate result of this arrangement was that Riaz Pasha, following Nubar's example, resigned the Presidentship of the Khedive's Council, and that, with a more docile Prime Minister in the person of Mustapha Pasha Fehmi, Lord Cromer found himself in a much stronger position than ever before as a "benevolent despot" in Egypt. As a

more satisfactory result, Sir John Scott, in hearty co-operation with M. Legrelle so long as they were colleagues, and also with praiseworthy assistance from the Egyptian officials, in relation with whom he held a somewhat invidious position, was able to bring the judicial machinery into a far more efficient condition than it had ever before attained.

Long as it is, the following quotation from Sir John's report for 1893 is necessary, giving as it does an authoritative summing-up of his achievements before the close of that year :—

Judges and their Qualifications.

"When I came here in 1890 I found a native system of justice recently founded on the pattern of the Mixed Codes. But it had partially failed, and required much direction and development. Since I arrived, the Ministry of Justice, the Judiciary and I have worked cordially together, not, of course, without occasional differences of opinion, but always with the common desire to found a sound Judicial Administration. The result of this *esprit de corps* has been steady progressive improvement, but the institution is too new to say we have yet attained our object. *Festina lente* has been our motto. We have introduced nothing revolutionary. We have only developed the system we found.

"The first necessity of good judicial administration is the sound legal education of all who enter the judicial profession. The judges must not only know the codes they administer. They must be masters of those general principles of law on which all civilised codes and legal systems are founded. This was not the case with the judiciary as we found it. Two duties lay before us. First, we had to eliminate as far as possible the ignorant element, and we have done this steadily and gradually, never removing a judge until we were absolutely sure we had a better man to fill his place. This work is not finished, but it is so much advanced that the majority of judges possess the requirements of their office. The work, however, has not sufficiently advanced to allow of the general adoption of the principle of unremovability.

"Our second duty was to renovate and put new blood into the existing School of Law, which we consider the nursery of our future judges. In this work the Ministry of Public Instruction cordially co-operated with us, and the Government agreed that for such work a strong and capable European head was for the present indispensable. We had the good fortune to find the man we wanted in M. Testoud, who sacrificed his professional career in France to become the present Director of the School. The course of instruction has been thoroughly reorganised. The entrance examination, the yearly examination and the final examination for the diploma of law have been made more severe. The principles as well as the texts of law are inculcated, and the intelligence as well as the memory of the pupils is cultivated.

Mussulman law, as well as French and Roman law, are taught, and the pupils are so keen to learn that it is no longer necessary to insist on the compulsory nature of their attendance.

"We give a natural preference to the pupils of this school, but we do not wholly exclude from the judiciary those who have brought their diplomas from Europe. The school is so popular that the number of pupils is now nearly double what it was in 1890. Night classes have also been organised, with great success, by M. Testoud. I do not say our system of legal education is perfect, but it is an enormous improvement on the past.

"One great reform seems to me to be still necessary. The professorial staff should be well enough paid to make the appointment desirable in itself, not a mere adjunct to the career of an advocate or a stepping-stone to the post of judge.*

"The next reform was in the system of judicial appointments. 'Tant valent les juges, tant valent les lois,' is a principle which had been overlooked before 1890; and judges had been named in Appeal as well as in First Instance who were far from possessing the necessary qualifications. For the first two years we made no written rules as regards appointments, but all who were competent to give an opinion as to the best candidate were consulted, and merit and capacity were strictly the only guides in our selection. Now that the School of Law has taken root, and may be counted upon for a steady supply of young lawyers, we have decided upon fixed rules for entrance and promotion, which may be briefly summarised as follows:— Every candidate must possess a legal diploma. Those who have studied in Europe must pass an examination in Mussulman law and the Arabic language. Promotion depends on seniority coupled with merit. Persons outside the Judiciary may be chosen from exceptional reasons of merit in the proportion of one to three. All appointments and promotions are made by a Committee of Nomination composed of the Minister and Under-Secretary of State, the President of the Court of Appeal, the Procureur-Général and the Judicial Adviser, and the exceptional appointments mentioned above must be confirmed by the Council of Ministers. It will be difficult in the future to appoint incompetent men, and the gates are pretty well closed to favour and patronage.†

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* It is alleged that the professorships in the School of Law, though better paid than formerly, are latterly little more than sinecures given to advocates and others in favour with the British Agency.

† This prediction, unhappily, has not been realised; though matters are not, since Sir John Scott's retirement, so bad as he found them on his appointment. "A certain number of judges," he wrote in 1899, "were totally unfit for their post, and they could not be allowed to continue. There had been no regular system of judicial nominations, and many members of the Bench reminded

"The extension of Summary Jurisdiction Courts, with considerable power, throughout the country, begun in 1891, and since gradually continued, has already justified by its success our persistence in the idea, in spite of considerable opposition on the part of many whose opinions were entitled to respect, I may mention that the system is not new. It is applied in Germany, Italy, Norway, Sweden, England, Algeria, and India. It has also its model in the Cadi system of the Ottoman Empire.

Summary Jurisdiction Courts.

"Another branch of judicial reform met with still more adverse criticism, but it is easily justified by its success. I refer to the Committee of Judicial Control. Its powers do not extend to the Court of Appeal, and its object is not to interfere with any particular judgment or sentence, but by a vigilant supervision to maintain general purity of decision and a sound interpretation of the law. It has now been at work over two years. There is no friction with the judicial body. Every tribunal is visited in turn; monthly returns of the judicial work are examined: 'dossiers,' taken at random, are daily studied; and the circulars issued by the Committee with the object of preventing negligence and errors in the future are invariably treated with respect. Without going into statistical details, I may here say that there are practically no arrears, either criminal or civil, in any tribunal, and the work is not only more promptly done, but it is done with more care and receives less modification on appeal. At the same time many blunders are still committed. Over fifty circulars have been issued by the Committee last year, and many of them were sent to all the tribunals, in consequence of some general error. The time may come when the superintending control can be withdrawn, but for the present it operates most usefully in the development of the tribunals.

The Committee of Surveillance.

"Other important improvements have been introduced, so as to bring justice within reach of the poorest suitor. The judicial body has been given a regular period of vacation, which has been so arranged that, whilst every judge gets an annual rest from his labours, the work, especially on the criminal side, does not suffer any undue delay. The advocates and pleaders, who had been admitted before 1890 too readily, and without sufficient consideration of their fitness, are now subjected to strict rules of admission, and no person will in future be admitted without a legal diploma and proof of respectability.....

Other Reforms.

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one of Figaro's saying, 'They wanted an arithmetician, and so they chose a drawing master.' For example, a doorkeeper of a recent Prime Minister had suddenly become a Judge of the Court of Appeal; and I could cite other equally flagrant cases."—('Journal of the Society of Comparative Legislation,' 1899, p. 242.)

"A circular was issued last summer by the Minister of the Interior, after consultation with the Minister of Justice, which, although it was merely declaratory of existing law, and made no real change in the codes, has had excellent results. Owing to causes which need not here be discussed, the police, in their duties as first investigators of a crime, as apart from their duties as preventers of future crime, did not act sufficiently in common with the Parquet to whom they were legally subordinate in such matters. The Parquet, similarly, did not sufficiently take common action with the police. It is useless to say where the blame lay. There was probably fault on both sides. But in June last meetings were held on the subject, and the heads of the two departments, in the presence of the Ministers concerned, came to an agreement which has definitely declared the Parquet responsible for the prosecution of all crime, and the police subordinate to them and subject to their orders in the investigation of each particular offence. This was merely an official declaration of existing law, but it brought the fact home to all concerned."—('Egypt, No. 1, 1894,' pp. 23-26.)

The Police and the Parquet.

The Parquet, it will be remembered, is an organisation of recognised native pleaders, numbering over eighty in 1894, of whom Sir John Scott reported that "almost all have received a legal education and possess a degree in law, but, as a necessary corollary for the present to this qualification, they are almost all young," and therefore lacking experience and the forensic skill that should come by practice. These young barristers, paid by fees for their services to the Ministry of Justice, were attched in groups to the several Native Tribunals, each group under a "chef de Parquet" who rarely appeared in court; and Sir John recommended that to these older persons "should be invariably assigned the investigation of crime and presentation of important cases to the tribunal, even at the risk of less excellent internal administration of their office."

Defects in performance of the duties entrusted to the Parquet, however, and more or less friction between it and the police—attributable to the division of authority between the Ministries of Justice and the Interior, and yet more to the difficulties inevitable to the despotic interference of the British Agency with Egyptian institutions professedly outside the sphere of British rule—have continued to this day.

Control of the Police.

Lord Cromer's firm action in opposition to Nubar Pasha in 1888, which led to the appointment of Riaz Pasha as Prime Minister in that year, was doubtless justifiable, and there seems to have been at least as good reason for the substitution of Mustapha Pasha Fehmi in May,

1891. But perhaps the only real excuse which can be found for the subsequent shiftings of office—in January, 1893, when Riaz was reinstated; in April, 1894, when he was finally dismissed and Nubar Pasha was temporarily restored to place; and again in November, 1895, when Mustapha Pasha Fehmi was once more installed in the dignified post which he occupied with such docility and tact that he was allowed to retain it until October, 1908—was that they were necessary to the setting up of such complete subordination of Egypt to British control as would bring the President of the Khedive's Council of Ministers no less under the thumb of the British Agent than were his several colleagues under the thumbs of their respective British Advisers. The extent to which Nubar had been brought into line is indicated by the following passage in Lord Cromer's report for 1898:—

"The system under which the Department of the Interior is now administered originated during the short period when Nubar Pasha last held office. Before that period the administration of the provincial police was centralised under an English Inspector-General at headquarters, working through resident English police officers stationed in the provinces. These officers were not under the orders of the Mudirs, neither were the latter under the orders of the police officers. The responsibility for preserving public order was, in fact, divided between the Mudirs and the police officers. The system did not work well. Nubar Pasha's extensive local knowledge and statesmanlike grasp of general principles enabled him to point out its main defect. Stated in a few words, this defect consisted in creating a dual responsibility in each centre of the provincial administration. The principal reason which induced Nubar Pasha, in spite of his failing health, to accept office in 1894 was a desire to place the affairs of the interior on a better footing than heretofore. Under his auspices a system was introduced which rendered the Mudirs wholly responsible for the maintenance of public order in their several districts. English inspectors, who do not reside permanently in the provinces, were substituted in the place of resident police officers."—('Egypt, No. 3, 1899,' p. 27.)

Two years earlier, speaking of the reforms that had been initiated primarily at the instigation of Sir John Scott, Lord Cromer wrote:—

"At the time when the changes now under review were introduced, a certain amount of apprehension was occasionally expressed lest the Mudirs should abuse their powers. These apprehensions were founded upon some misapprehension of the changes introduced, as well as of the state of things that existed before their introduction. The police was then, as now, composed entirely of natives: the only reason for supposing that the Egyptian police officer acted as a check on the Mudir was that the former was under the

control of the English Inspector-General of Police at head-quarters, whilst the latter was under no such control. This English control, though effective as regards the police officer, was practically powerless as regards the Mudir. Hence there arose frequent conflicts, which caused friction, but produced no beneficial result. Moreover, the functions of the English provincial inspectors, under the old system, were necessarily limited to police work. Outside this sphere their observations were of little practical value, inasmuch as no effective action could be taken on them.

"Under the new organisation English control is equally distributed over all the local officials, over Mudirs just as much as over police officers. Their administration is subjected in all its branches to a thorough and competent examination by English officials. Complaints of unjust or arbitrary treatment receive an independent examination at the same hands. The presence of an English Adviser at the Ministry not only insures that the administration is conducted on sound lines, but also that due attention is paid to the reports of the inspectors. There can be no question as to which of these two systems offers the greater guarantees for good government.

"In practice the machine has worked smoothly. The Inspectors have displayed tact and judgment in the exercise of their functions. There has been little or no friction with the local authorities. The latter no longer regard English control as a jealous rival wishing to usurp their powers, but as a teacher guiding them to use those powers aright. The Mudirs in particular have largely gained by the new conditions under which they work. Their position and prospects are now clearly defined. The road to promotion is open to all alike; good work is rewarded by whomsoever it may be done; nepotism has been checked.....

"It is hardly necessary for me to add that this satisfactory state of affairs is only partly due to the change of system. A very large share must be laid to the credit of the two Egyptian Ministers who have presided over the Ministry of the Interior since April, 1894, that is to say, Nubar Pasha and his successor, Mustapha Pasha Fehmi. Without their cordial co-operation and encouragement, aided by the tact and judgment displayed by Mr. Gorst, the Adviser to the department of the Interior, a successful result could not have been attained. As it is, all parties have worked harmoniously together for the attainment of one common end, viz., the establishment of a sound provincial administration."—('Egypt, No. 1, 1896,' pp. 16, 17.)

Lord Cromer took too sanguine a view of the results of the combined efforts of his British and Egyptian subordinates to bring about reforms which he himself regarded as of trifling importance in comparison with financial developments; and, while he was right in praising the two Prime Ministers, as well as the able English official who has now succeeded him as British Consul-General, he was, to say the least,

ungracious in ignoring, as regards the legal and judicial improvements in Egyptian administration, the great services rendered by Sir John Scott. Welcomed at first, and afterwards more or less grudgingly listened to and partially complied with, Sir John soon made himself troublesome by the thoroughness of his proposals, especially if money as well as zeal was necessary for their satisfactory adoption.

Of these proposals some illustrations have already been given in his own words. Others may here follow.

Speaking, in the report already quoted from, of the good results of the system of Summary Courts—introduced in 1891 on his advice—for the trial, by a single judge, of minor offences, instead of their being sent to a tribunal of three judges, and of the actual diminution of "brigandage"—which, he said, "is no longer practised as a profession," notwithstanding the increase of convictions in 1893—the Judicial Adviser added :—

The Suppression of Crime.

"This increase in the proportion of convictions is an important sign of progress. It shows that the police are able to get more evidence, which is always a difficulty when the people are not yet alive to their duty to support justice. But the fear of an accusation of crime ending in acquittal, and the consequent vengeance of the accused, still leads to the concealment of many offences. This virtual encouragement of crime will not cease until villages all actively contribute to their own protection. The better organisation of ghafirs has done much in this direction. But the efficient suppression of crime will not be achieved until there is only one headman (omdeh) in every village, carefully selected by Government, paid either in honour, privileges, land, or money, and held strictly responsible for village order. I proposed this measure three years ago, but fiscal objections prevailed. The Government now has an annual surplus, and I would suggest that an increase in public security is just as valuable to the people as a decrease of taxation."—('Egypt, No. 1, 1894,' p. 27.)

That recommendation having been grudgingly acted upon, along with others made by Sir John, he reported in 1895 :—

"The development of the one-judge system at the Summary Courts, of which there are now forty-two in Egypt, and the great increase of small civil cases in them all over the country, are important features of the last two years' work. Many of the cases are so very small in amount that I think perhaps the Government might be induced to reconsider my proposal that claims under £1 should be left to the arbitrament, either by conciliation or by decision, of the village Omdeh. It must be remembered that the Omdeh is

Summary Courts and Village Jurisdiction.

now carefully selected, is remunerated for his work, not only by privileges but by special exemption from taxation, and that he is also severely punished for any dereliction of duty. If this jurisdiction is granted, the Omdehs should be obliged to keep registers of each case, and the registers should be submitted to the Inspectors of the Committee of Judicial Surveillance. The system of registration will be difficult to carry out in the present state of village education, and the proposed power could only be given to Omdehs who know how to read and write. On this point I may add that the Committee of Surveillance and myself have carefully investigated the judicial work of the Omdehs since last July, when they acquired a limited criminal jurisdiction necessary to maintain order in their villages, with the power of punishment up to twenty-four hours' imprisonment and 15 piastres fine. The result of our inquiries is that the Omdehs have done their work on the whole satisfactorily. This encourages me in the suggestion that the Government should give them a limited civil jurisdiction to the amount that I have mentioned."—('Egypt, No. 1, 1896,' p. 39.)

The Committee of Judicial Surveillance.

The far-reaching and comprehensive nature of Sir John Scott's intelligence is illustrated by his shrewdness in suggesting a moderate extension of the Omdehs' magisterial functions which involved their advancement in general education, and consequently a strengthening of the conditions necessary to the development of self-governing capacities among dwellers in villages as well as in towns and cities. The Committee of Judicial Surveillance or Control, referred to above and in a previous quotation, is a more notable illustration of the same intelligence, here applying itself to work more strictly within the province of a Judicial Adviser. This Committee of Surveillance was established at Sir John's instigation as a corrective to the defects of the system of Juges d'Instruction, whose proceedings were, in his opinion, far oftener harmful than beneficial. The opinion, however natural it may have been in the circumstances then existing, had an unfortunate issue in the abolition, instead of the thorough amendment, of the office of Juge d'Instruction, which has since had to be revived under the new title of Juge de Renvoi. That office, in turn, is far from properly meeting the needs of the situation. In our opinion it would greatly facilitate the investigation of crime if the powers of this functionary were extended, so as to correspond with those of a British stipendiary, thereby effecting a vast saving of time and judicial strength. Our system in that regard, on account of its simplicity and the effective guarantee it affords to the defence, is admired by all Continental lawyers acquainted with its working. The Marquis de Tankerville,

a high authority, has recommended it for France; and any objection to the substitution of the English accusatorial for the French inquisitorial method is purely theoretical. Unfortunately Sir John Scott did not take this view. In 1894 he had written:—

"There are naturally many defects in a young institution; and perhaps the weakest point is to be found in the preparation of criminal cases by the Judge of Instruction. I have examined a very large number of 'dossiers' solely from that point of view, and my conclusion is that, in nine cases out of ten, the judge does not advance the inquiry, either by obtaining more evidence, or by giving greater exactness and value to the evidence already obtained by the police and Parquet. At the same time, the procedure before him delays justice for weeks, and even months. The effect of this delay is that, in case of a conviction, the punishment of crime loses half its efficacy by reason of its tardiness; and, what is even worse, an acquittal is often necessary because proofs are lost, or witnesses for the prosecution are wearied out by the protracted procedure, while the defence has time to concoct any amount of false evidence."—('Egypt, No. 1, 1894,' p. 27.)

This evil was, perhaps, temporarily overcome by the Committee of Surveillance and a Committee of Inspection working under it, so that Sir John felt able to write in 1897, "The old charge that 'justice long delayed is no justice' cannot now be directed against the Native Tribunals." Twelve months before he had written:—

"The Committee of Judicial Surveillance has now terminated its fourth year of office. Its powers have been increased so as to include the work of the Parquet as well as the decisions of the Tribunals. Certain adverse criticisms of the institution appear from time to time, from a misconception of the system. It may be useful once more to state that the superintendence of the Committee either by its own action or by the action of its inspectors does not include any change in any decision, civil or penal, that has been given by any tribunal in the country. Its sole object is, by letter and circular and oral discussion, to maintain purity and sound law. The original idea of the Committee when founded in 1891 remains the same to-day. When it was decided to regenerate the native justice by native agency, it was also decided, as essential to success, that the circumstances of the country required a system of judicious check and vigilant superintendence. The working of the Committee has now extended over sufficient time to judge of its success. Each year the judgments of the tribunals have improved. This, of course, is due very much to the greater experience of the judges; but I have no hesitation in saying that it is also due to the careful supervision of the Committee. I can also add that the inspectors do their work with great discretion, remain always on friendly terms with the judges, and avoid all unnecessary friction."—('Egypt, No. 1, 1896,' p. 40.)

Speaking more generally, Sir John Scott said in the same report:

The Appeal and First Instance Courts.

"The Court of Appeal is not subjected to the supervision of the Committee of Surveillance. It was decided that it should remain the supreme tribunal of the country, free from any kind of supervision which might appear to invest an extraneous body with appellant or revisionary powers. It also possesses the exceptional guarantee of a strong European element in the proportion of one to three. Its minor work has been much diminished by most of the appeals in *délits* being transferred from the Court of Appeal to the provincial Appellant Tribunals. In spite of this considerable relief from the smaller class of cases, arrears have grown up in the last year.....

"The great extension in number and jurisdiction of the Summary Courts has considerably affected the central tribunals. They have become provincial Appeal Courts rather than Courts of First Instance, except in those cases of crime where three judges are still necessary to hear the case. The decisions of some of these provincial courts have not been quite up to the level of former years. Their efficiency has perhaps been impaired by the necessity of taking the best men for Summary Justice, where a single judge has the entire responsibility of decision. If the whole judicial staff had been chosen from the beginning as the judges are now chosen, purely from the point of view of capacity and knowledge, this difficulty would not exist. But there remain in the tribunals certain 'non-valeurs judiciaires' who are not able to contribute their share of good work, not from any fault of their own, but because careless selection of judges was at one time a common incident. A certain amount of 'épuration' still remains to be done if the Government wishes the institution to work at its best. Meanwhile the increased confidence of the people shows the improvement to be great, and even in provincial centres the distribution of judges is so managed that at least one first-rate man sits in every chamber. For further progress we must wait till the Financial Department can, consistently with other claims, admit certain of our staff to the privileges of pension.....

"In my recent tour of inspection in Upper Egypt I received constant complaints of the prevalence of false testimony and the consequent difficulty of ascertaining the facts sufficient to justify a conviction. I discussed the matter not only with the judges but also with the Executive authorities and those Omdehs whom I saw. The outcome of the discussions may be summed up as follows: Perjury is a vice of the country, and requires some system of strong summary suppression. The present provisions of the Code are too dilatory in their application. What is wanted is a power invested in the court before which the witness has testified falsely to decide the case and pass a summary sentence, as is now done in a case of contempt of court. If the punishment follows immediately on the offence, the duration of imprison-

ment might be brief, say, from a week to a month. In order to guarantee fairness, the judge should consult the Parquet before exercising power.....

"The Progress of Justice."

"In considering the progress of justice two questions must be asked—(1) Are the civil tribunals used freely by the people, or do claims go unsettled? (2) Has crime diminished and has public security increased?

"The first question can be answered without doubt in the affirmative; but the second question cannot be answered with the same certainty. In the eradication of crime, law is only a partial agent. The increased well-being and education of the people afford the only full remedy. Poverty and ignorance still operate against the certainty of punishment. The people are averse to the burden of prosecution, and are unwilling to give evidence either for the State or for other people. There is also much regrettable want of regard for human life. Jealousy or family vengeance too frequently leads to murder, and the fellaheen still kill each other in a quarrel about a hirat of land or a heap of manure. In such questions they are not satisfied with the impersonal action of the law. I lately heard a man on his trial for killing a neighbour who had wrongfully taken a small bit of his land which the law had given him back. The president asked him why he was not satisfied with the action of the law. He answered, 'The law could not give me my vengeance, and I was obliged to take that for myself.'

"However, in certain important directions there is a decided progress. Gang-robbery, accompanied by murder, has almost disappeared. It is not ten years ago that it was so rife thoughout the country that Special Commissions, with summary powers of life and death, were appointed, and failed to deal effectually with the evil. The greater efficiency of the police, the better preparation of cases by the Parquet, and the consequent increase of conviction, have gradually suppressed brigandage" (*Ibid.*, pp. 39-41).

Sir John Scott's Influence and Character.

It is manifestly impossible, within the limits of these notes, to give anything like a complete account of the good work done by Sir John Scott during his residence in Egypt from 1889 to 1898, when—chiefly, it is understood, through lack of sympathy and adequate support from the British Agent—he resigned his office; but the foregoing extracts from his reports may help to show how varied, and of what great importance, were the services he rendered to the Egyptians. These services have been more than once acknowledged by Lord Cromer, who admits that "the establishment of a sound judicial system in Egypt may be said to date from the time of Sir John Scott's assumption of the office of Judicial Adviser."—('Modern Egypt,' vol. 2, p. 290).

And Mr. Wilfrid Scawen Blunt, speaking of him as "a man of high integrity, great experience of Egyptian law, and sincere sympathy with the natives," only gave plain utterance to the opinion of all unbiassed observers acquainted with the precise facts of the situation when he wrote :—

"Under him the native law courts were reformed, both in procedure and in the personal character of the judges. His principle in appointing these was to choose men known for their probity and also for their independence of character, not merely, as we have seen them later, for their subservience to English orders. As long as Scott remained in the position of practical Minister of Justice the whole native magistrature was inspired with confidence and a certainty that judgments delivered by them, even against Englishmen, so long as they were just, would bring them into no trouble. He found himself, however, constantly at variance with Lord Cromer in regard to the appointments to the Native Court of Appeal. Lord Cromer was for strengthening the English political position in Egypt by influencing the courts and by appointing a majority of Englishmen to the judgships, and only such natives as should be amenable to English pressure, whereas Scott maintained that there were plenty of native judges more competent than, and quite as worthy of confidence as, the Englishmen. This eventually led to Sir John Scott's retirement, as Sir Benson Maxwell had retired before him ; and from that date may be reckoned the grosser violations of law and interferences with judicial independence which recent years have shown." ('Atrocities of Justice in Egypt,' p. 19.)

But the highest tribute to his worth is the grateful recollection in which he is held by the Egyptian people. "He had a most disagreeable work to do—to get rid of incompetent and corrupt instruments," writes one who served under him and shared his views. "But he did his work effectively ; and when he left the country, even those who had suffered from his purification of the Augean stables mourned Egypt's loss. He never made an enemy. The natives idolised him, and that was the chief reason for sending him away."

Native and Mixed Tribunals.

As one of the quinquennial periods for the expiry of the Mixed or International Tribunals in Egypt, unless they were renewed, was to occur on 31st January, 1900, Sir John Scott made the following remarks in a letter which appeared in the *Times* of 15th February, 1899, with reference to the Native, or, as he here called them, National Tribunals :—

"The public is already aware that the National Tribunals, which must not be confounded with the Mixed Tribunals, of Egypt have so much improved under English guidance that they have now not only won the

confidence of the natives in their disposal of all civil native disputes, but have also shown remarkable independence in their administration of criminal justice. An important question is now looming in the distance, and not very far off. Are not these National Courts of Egypt capable of doing all the judicial work of the country sufficiently well to justify the Egyptians in claiming the ordinary right of every country to administer justice to all who dwell within its limits? One half of the members of the National Court of Appeal are foreign judges, though named and paid by Egypt. Indeed, all are English, save one Belgian lawyer, and the Vice-President of the Court is a sound English lawyer; so that there is every guarantee for sound justice.

"Is not the time coming near when England and Egypt together might announce, as France did singlehanded about Tunis, that there is no longer any necessity for a system of International Courts?

"It would no doubt be necessary, as France did, to increase for a time the foreign element in the judiciary; and it would be equally necessary to guarantee all respect to the religious Mohammedan tribunals, whose judges would remain as they are. But all those interested in Egypt would be glad to see the country invested with full judicial power and relieved of the incubus of an international judiciary composed of English, French, German, Austrian, Italian, Russian, American, Greek, Spanish, Portuguese, Belgian, Dutch, Swedish, Norwegian, and Danish nominees of their respective Governments.

"Of course this will not be done in the coming year. But the very remarkable progress of the National Courts has brought this question into the range of practical politics."

The question is, unfortunately, less within the range of practical politics now than it was ten years ago; and that notwithstanding the external facilities afforded for the change by the Anglo-French Agreement of 1904 and its issues. Thanks especially to Sir John Scott's zeal and wisdom, the Egyptian Native Tribunals had acquired so much dignity and efficiency before his retirement, had secured so much confidence and respect from foreigners as well as from natives, that there was good reason for expecting such further and gradual improvement in them during the next few years as might have rendered it expedient, and not very difficult, for Great Britain to induce the other Powers sharing in the Capitulations to surrender their out-of-date privileges and to consent to the merging of the Mixed and Native Tribunals into one comprehensive and efficient machinery for the administration of justice in Egypt; the Consular Courts being abandoned altogether, and the functions of the Sharia Mehkemeh being limited to the settlement of strictly ecclesiastical questions. But the Native Tribunals have lost character and capacity most lamentably

throughout the past decade; and—in defiance of persistent professions that, as Lord Cromer put it, "our task is not to rule the Egyptians, but as far as possible to teach the Egytians to rule themselves"—there has been such a development in the direction of ruling Egypt as if it were exclusively a British possession,* that Egyptians as well as foreigners in Egypt still see in the Mixed Tribunals, and even in the Capitulations, a help rather than a hindrance to the upholding of their rights.

IV. The Past Decade.

Sir Malcolm McIlwraith's Work.

Sir John Scott was in October, 1898, succeeded as Judicial Adviser by Mr. (afterwards Sir) Malcolm McIlwraith, an English barrister without practice, and also a "licencié en droit" of Paris—that being the lowest degree in law granted by the University, and one which does not entitle its holder to practise in a French court. Well acquainted with the French language, Sir Malcolm had no knowledge of Arabic, and throughout his long dictatorship in the Egyptian Ministry of Justice he has had to rely on interpreters and translators for information as to proceedings in the courts and documents requiring his inspection. In this respect, but perhaps in no other, his colleague, Mr. Corbet, who was Procureur-Général from 1897 to November, 1908, had some advantage over him. Though able to converse in Arabic however, Mr. Corbet, previously a schoolmaster, had had no legal training whatever.† It was not altogether the fault of these two high officials, therefore, that, when left to their custody, the judicial machinery which Sir John Scott had done so much to build up soon began, and steadily continued, to deteriorate, notwithstanding the greater favour with which the newcomers were regarded by Lord Cromer.

[* A rectification of this policy, as regards the appointment of natives to public posts, is one of the important developments for which Egyptians and Englishmen have to thank Sir Eldon Gorst. Sir Eldon can justly claim that he is applying principles laid down by his distinguished predecessor; but the effectual application constitutes something like a new departure. The loud and virulent protests made on the subject by some members of the official class through articles in the English press testify to the importance of the reform.—Ed.]

[† Mr. Corbet, having earned his pension a few months ago and been decorated for his distinguished services, has returned to his former calling, being now employed in conducting Egyptian youths sent by the Egyptian Government to England to complete their studies. This new post carries with it a salary of £400.—Ed.]

One of the many difficulties with which Sir John Scott had to cope in his improvements of the Egyptian machinery for administration of justice was the smallness of the funds allowed for this purpose. The entire expenditure on Native Tribunals in 1898 was limited to £E166,862. In 1907 an outlay of £E189,660 was sanctioned; and the increase during the ten years, in charges on account of police, prisons and other appliances for the maintenance of public order and dispensing of justice, was in about the same proportion. More money, much more, might have been spent to this end, and with the hearty concurrence of the taxpayers, had it only been well spent. Unhappily, the additional expenditure has, with a few exceptions, been harmful, instead of beneficial.

Codification of Laws.

An undertaking for which Sir Malcolm McIlwraith was especially commended by Lord Cromer, was the codification of Egyptian laws. As the result of seven years' labour in his office, revised Penal and Criminal Procedure Codes came into force in April, 1904; and in March, 1906, he reported:—"Further revision of parts of these codes is much required, and will be undertaken as opportunity admits. Civil procedure, also, is in urgent need of amplification and simplification."—('Egypt, No. 1, 1906,' p. 78.) No revision of the native civil commercial, or civil procedure codes has yet been undertaken, though the necessity is notorious. These codes, based on the Code Napoleon, were prepared in great haste, and with very little regard for symmetry or consistency. The great complaint is that the legal machinery in civil courts is far too complicated, thereby causing unnecessary delay; and the costs of proceedings, especially of execution, are a great burden on the poor. As regards the Penal and Criminal Codes the object of revising them was, according to Lord Cromer, "freeing them from useless formalism"; but the revision was intrusted to what a competent informant describes as "a committee of Englishmen, not one of whom had brought from his own country a grain of professional reputation, or knew the A B C of criminal procedure, and most of whom were entirely ignorant of the language, people, history and traditions of Egypt." He adds, "They are too intricate and subtle for an illiterate population to comprehend."*

* Although it is not attempted to deal with Sudan questions in this pamphlet, the following very suggestive remarks may be quoted from the same informant's letter: "The Sudan Codes differ *in toto* from those of Egypt. They are, *mutatis mutandis*, the Indian Codes. Every one who has the most superficial acquaintance with them

More useful work was done by the new Judicial Adviser in strengthening the Summary Tribunals introduced by Sir John Scott, and in supplementing these institutions by Markaz or District Courts, of which there were sixty-four in 1904, the number being afterwards raised to a hundred and four, and in which magistrates delegated from the Tribunals of First Instances are empowered to deal with criminal cases and to pass sentences of imprisonment for a month or of fines up to £E 2.

Summary Tribunals and Markaz Courts.

But Sir Malcolm's most famous achievement has been the introduction of Circuit Assize Courts, in which three judges of the Court of Appeal are authorised (subject to reference, when necessary on points of law, to the Court of Cassation, with five judges of the Court of Appeal on the bench) to give final decisions on all allegations of crime sent up to them by magistrates after consideration of the records of evidence collected by members of the Parquet. This innovation, adopted in Lower Egypt in 1905, and extended to Upper Egypt in 1906, "met with strong opposition," as Lord Cromer acknowledged in his report for 1905; and if he was justified in adding that "this opposition is now practically silenced," it can only have been because its opponents had temporarily abstained from uselessly addressing their appeals and protests to deaf ears. Lord Cromer himself could find no better or other excuse for the change than that it led to a saving of time. He wrote:—

Circuit Assize Courts.

"Under the old system the average length of time which elapsed from the moment that a crime was committed until the case had been heard in First Instance and Appeal was no less than 230 days. The average period now occupied by the Assize Courts is 71 days. It cannot be doubted that, though the dilatoriness which characterised the former proceedings has

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perceives that they are highly complex. They are administered, for the most part, not by lawyers, but by soldiers without legal training or experience. There is in India a whole library of cases interpreting the various sections. In the Sudan such decisions are ignored, the light of nature being the judge's only guide. I well remember the Legal Secretary, Bonham Carter—who, by the way, came straight from a London conveyancer's chambers—being quoted by Lord Cromer in an Annual Report as saying that the Sudan Codes were 'simple, just, and suited to the habits of the people,' before he had been in the Sudan a single month. Some few years after, having forgotten what he had written, he was again quoted by Lord Cromer as saying that people were often punished for crimes the nature of which they did not understand. There ought to be the same law for the Sudan and Egypt."

disappeared, the interests of justice have in no way suffered. Of thirty-nine appeals from the Assize Courts' decision to the Court of Cassation only three were successful."—('Egypt, No. 4, 1906, p. 77.)

Lord Cromer appears to have forgotten for the moment that only on points of law can appeal be made to the Court of Cassation; and on the next page of his report we read :—

"Sir Malcolm McIlwraith very rightly draws attention not to a defect of the system which has been adopted in respect to the Assize Courts, but to the manner of its application. Between the months of March and December, 1905, the committing magistrate (Juge de Renvoi) sent on 1,519 prisoners to the Assize Courts. Of these, 978 were convicted, 510 were acquitted, and 31 are classed as 'not convicted for various reasons.' These reasons were insanity, death, or absence of jurisdiction. It appears, moreover, that 1,564 prisoners were brought by the Parquet to the Juge de Renvoi. Thus, with the exception of 45 prisoners, all those who were brought by the Parquet to the Juge de Renvoi were sent on by the latter authority to the Assize Courts.

"On these figures Sir Malcolm McIlwraith remarks:—'It seems clear, from the various reports I have received, as well as from the statistics of acquittals, that the Parquet and committing magistrate send up too many cases to the Assizes. This is, no doubt, a fault on the right side, and it would be obviously very undesirable that the judges should go too far in the opposite direction. But it is none the less an important matter, to which I desire to draw the attention of the committing magistrates, that they should systematically decline to send forward any case in which they are quite convinced that there is not sufficient evidence upon which an Assize Court could convict. People should not be put in peril of their liberty on insufficient grounds.'"—(*Ibid.*, p. 78.)

"I trust that these weighty remarks will receive due attention from the various authorities concerned," Lord Cromer wrote with reference to them, and with good warrant. However advantageous it may be that perpetrators of crimes should receive punishment for them some three, instead of nine, months after their committal, it is a grave scandal and most prejudicial to the interests of justice that more than a third of the prisoners sent up for trial should be the victims of blunder or malice, and be subjected to weeks or months of suspense and greater damage, without even compensation, before being discharged as innocent. And in spite of the drumhead expedition with which this new-fangled machinery operates, crime continues to increase.

The introduction of trial by jury may not—at present, at any rate—be expedient in Egypt. But no arrangement could be much worse

than the Assize Court system established by Sir Malcolm McIlwraith, under which often ill-selected judges are empowered to deal absolutely with charges of the gravest description, without a jury and without appeal save on points of law, in itinerant tribunals more or less remote from even such observation and control by public opinion as they would be liable to in Cairo or Alexandria. The risks of culprits being allowed to go unpunished or being inadequately punished are not less than are the risks of innocent men being made to suffer, with or without formal sentence of punishment, for the offences of others. Policy of this sort is certainly provocative of the lawlesssness which both the last and the present British Agents in Egypt declare to be increasing alarmingly in the country.

After quoting with approval the Judicial Adviser's suggestions for further "reforms" on the lines of his Assize Court institution, Lord Cromer wrote in March, 1906:—"The experience of the past justifies the belief that the Ministry of Justice will, in course of time, be able to deal as successfully with the various points enumerated by Sir Malcolm McIlwraith as they have done with those they have already treated." Subsequent experience, however, has not justified that belief; and a year later, in the report that practically closed the record of his Consul-Generalship, Lord Cromer, complaining of the distressing increase of crime, chiefly incases of murder, robbery and arson in 1906, as compared with 1905, said:—

Increase of Crime.

"I have no hesitation in stating that this increase of crime is the most unsatisfactory feature in the whole Egyptian situation.....It generally happens that increasing poverty is the parent of increasing crime. No one with the least knowledge of the country will think that the recent increase of crime in Egypt is due to poverty. There must be some other cause, and, in my opinion, it is not far to seek. It is, I think, to be found in the fact that the law does not inspire sufficient terror to evil-doers. Only 43·5 per cent. of the crimes committed last year (in 1906) were punished. In the remaining 56·5 per cent. it was found impossible to discover the criminals, or, if discovered, to prove their guilt. I was talking a short time ago to a distinguished Frenchman who was well acquainted with the affairs of Algeria. He explained to me that certain districts lying in the Algerian hinterland, where military law used to be applied, had recently been brought under the ordinary civil codes. The comment of one of the principal Algerian sheikhs on this change was curious. 'Then,' he said, 'there will be no justice. Witnessess will be required.' I commend this remark to those who are in a

hurry to apply Western methods in their entirety to a backward Eastern population. The sheikh was not in the least struck with the fact that, in the absence of witnesses, an innocent man might possibly be condemned. What struck him was that, as no one could be condemned without witnesses, guilty people would generally escape punishment. This is precisely what is happening in Egypt.....There should be no delusion as to the time which will be required, or the difficulties which have still be encountered, before a well-established reign of law can take the place of the arbitary system under which, until recently, the Egyptians were governed. In the meanwhile, let us by all means do everything that is possible, not merely to improve the police and the judicial system, but also, by indirect means, such as education and the establishment of adult reformatories, to diminish crime and check criminal tendencies. But, simultaneously with all this, I trust that criminals will receive adequate punishment when their guilt has been brought home to them. I deprecate the false sentiment which expends all its sympathy on the criminal and reserves none for its victims. I at times observe symptoms which lead me to believe that this sentiment prevails to a somewhat excessive degree in Egypt."—('Egypt, No. 1, 1907,' p. 85.)

It is, perhaps, not unreasonable to assume that that querulous remark was prompted, in part, at any rate, by Lord Cromer's chagrin at the unexpected sympathy expended, in England as well as in Egypt, on the "criminals," instead of on the "victims," in the Denshawai incident, as it is called, which happened a few months before the remark was made.

The Denshawai Incident.

Be this as it may, the Denshawai incident is a glaring illustration of some of the faults with which the machinery for administering justice in Egypt is chargeable. The facts are too well known to need more than very brief recapitulation here. On 13th June, 1906, five officers of the British Army of Occupation, visited the village of Denshawai, near Tantah, and between Cairo and Alexandria, for a day's pigeon shooting, and proceeded to take their sport by shooting, without permission, the pigeons which are there bred in large numbers for the market. Not unnaturally, the officers were attacked by a crowd of peasants anxious to save their property, and especially incensed by the presumably accidental wounding of a woman in the scuffle that ensued. Three of the British officers were more or less seriously injured, and one died from sunstroke after running four and a half miles in search of assistance. For the punishment of the offenders a Special Tribunal was set up, and on 27th June, this

tribunal, practically invested with the powers of a court-martial, sentenced four of the alleged ring-leaders to death, and nine to penal servitude—two of them, including the husband of the woman who had been wounded, for life; one for fifteen years; and six for seven years. Three others were sentenced to a year's imprisonment and fifty lashes apiece; and five more were let off with fifty lashes apiece. The remainder of the prisoners, numbering thirty-one, were acquitted. On the following morning, only fifteen days after the disturbance, the hangings and floggings—for which the appliances had been sent down from Cairo beforehand—were "properly carried out" with "all possible humanity," as the Acting-Consul-General reported ('Egypt,' Nos. 3 and 4, 1906). Early in the following year the prisoners still in confinement were "pardoned" and released, but the floggings and the hangings could not be undone.

For the enforcement, with the desired expedition and thoroughness, of this vindictive punishment of Egyptian peasants who dared to object to the destruction of their own property, either communal or individual, by a party of British officers out for a day's sport, Lord Cromer had sanctioned revival of a Khedival Decree—issued in February, 1895, for an exceptional purpose, only acted upon once again in eleven years, and supposed to be practically obsolete—which provided for "a special tribunal to take cognisance, in special cases, of crimes and offences committed by natives against soldiers or officers of the Army of Occupation, or against sailors of British ships of war stationed in an Egyptian port," and which was evidently intended to be used only in cases of dangerous outrage upon Englishmen engaged in performance of their duty. The alleged renewal of Mohammedan fanaticism, and its effect in stirring up a general spirit of lawlessness, was afterwards one of the excuses put forward for this arbitrary proceeding; but the earlier plea of the Acting Consul-General—who wrote on 1st July, 1906, "I do not belive that this brutal attack on British officers had anything directly to do with political animosity"—was that it was "due to the insubordinate spirit which has been sedulously fostered during the last year by unscrupulous and interested agitators" ('Egypt, No. 3, 1906,' p. 14). Whatever may have been the pretext for it, however, this "brutal attack" on Egyptian rights, giving fresh vigour to the "insubordinate spirit" it attempted or pretended to crush, showed how superficial and unreal was the assumed success of British rule in establishing adequate methods for the administration of justice and the maintenance of public order in Egypt.

In several of his Annual Reports, besides the one last quoted from, Lord Cromer called attention to—and offered divers and sometimes contradictory explanations for—the steady increase in the number of felonies, as distinct from misdemeanours, that were brought to light and punished in the Native Courts in each year after 1898—which year, it will be remembered, was the last of Sir John Scott's service in Egypt. To the efficacy of the reforms introduced mainly at Sir John's instigation, and carried out under his zealous supervision, may be attributed not only the growth in the country of a sense of security and of manifest respect for law and order—of which there was evidence in the comparative dearth of reports as to gang-robberies and other serious offences known to have been perpetrated, though the perpetrators often went unpunished—but also the gradual reduction in the yearly totals of convictions. These totals had shrunk from 1,866 in 1896 to 1,342 in 1898, and in 1899 they were only 1,251. But from that level they rose in successive years to 1,740 in 1902, to 2,121 in 1903, and to 3,109 in 1904, the number in 1905 being only 98 less, or 3,011, while in 1906 there was again a rise, the total being 3,201.* And not only does the number of crimes increase in this alarming way, but the nature of many of them points to a progressive failure of the repressive machinery. One of the most startling symptoms is the frequency of unpunished murders of omdehs and other officers of justice. Nor is this all. It is no uncommon thing for whole villages to settle their quarrels over land or women by joining battle, and

The Ebb and Flow of Lawlessness and its Causes.

* The above are the figures given by Lord Cromer in his Annual Reports—'Egypt, No. 1, 1904,' p. 47; 'Egypt, No. 1, 1906,' p. 45; and 'Egypt, No. 1, 1907, p. 85. But in his Report for 1907 ('Egypt, No. 1, 1908,' p. 29) Sir Eldon Gorst gives the figures for 1906 as 3,586 and those for 1907 as 3,288, showing for 1907 "a substantial decrease of 298 crimes as compared with the preceding year." He adds: "The check to the steady increase in the amount of crime which has been a discouraging feature of the last few years is a legitimate ground for satisfaction, and it is to be hoped that this improvement may be maintained." But there is not much encouragement in the following sentences: "The only crime in which there has been an increase is murder, including attempted murder, there having been 21 more cases than in the previous year. It is satisfactory that the proportion of cases of murder and attempted murder filed provisionally for want of evidence has decreased slightly from 49·3 per cent to 48·9 per cent." If nearly half the cases of murder or attempted murder still go unpunished, no one should wonder that any aggrieved Egyptians place no confidence in the law courts and adhere to the old preference for private vengeance.

leaving many dead and wounded on the field.* The facts are too flagrant to be burked. Writing in 1905, Lord Cromer said :—

"During the last few years I have been somewhat puzzled to explain the apparent anomaly that a notable increase of crime has taken place simultaneously with a very remarkable and progressive increase of general prosperity. Many explanations have been given of this circumstance. It has been stated that the police were inefficient; that the ghafir system was badly organised; that the judges were too lenient; that the judicial system was ill adapted to the special requirements of the country, &c. In each one of these statements, taken by itself, there may be a certain amount of truth, but they all fail to account for the fact that crime steadily diminished from 1891 to 1899, and that since 1899 it has steadily increased. The machinery of justice, whether in its judicial or executive branches, was substantially the same during both periods; neither can it be said that there has been any deterioration in the manner in which that machinery has been manipulated. On the contrary, it may be asserted with confidence that in this respect there has been a marked and continuous improvement."—('Egypt, No. 1, 1905,' p. 45.)

This confident assertion is open to dispute. It appears, in fact, to be pretty well discredited by other statements referred to in the same paragraph as having possibly "a certain amount of truth" in them, and elsewhere more emphatically endorsed by Lord Cromer himself. He had sought, in the revised Penal and Criminal Codes, by increasing the minimum penalties, and so "tightening up all round," the entire repressive machinery to guard against the alleged leniency of the judges and put down crime. The method was wholly fallacious. Mere heightening of penalties never did, and never will, put down crime. It was common in England less than a century ago to see men hanged for sheep-stealing, the atrocity of the penalty having no deterrent effect. In Egypt, in reality, deterioration has taken place in the judicial machinery; and on the vital importance of that we have Lord Cromer's own admission. In his book on 'Modern Egypt' he cites approvingly a favourite quotation of Sir John Scott's: "Tant valent les juges, tant valent les lois." The saying is true, and it helps to explain the deplorable falling off in the administration of justice and maintenance of public order in Egypt, especially after the retirement of Sir John,

[* An instance in point is supplied by the following paragraph from the pro-Occupationist journal, the *Egyptian Gazette*, on August 11th, 1909: "ANOTHER BATTLE. The Mellawi Markaz has now its daily battle. The last one occurred at Nahiet el Sheikh Ebadeh, where the quarrel arose at a 'zikr' [a religious gathering]. The result of the quarrel was one woman killed and twelve gravely wounded."—ED.]

who not only saw that the best men available were selected as judges and for other offices within his control, but also kept them as far as he could up to the mark; whose sterling honesty and strong personality, moreover, enabled him to exert a commanding influence over the relations of his colleagues in the Ministry of the Interior with the Mudirs and other representatives of local government—as understood in Egypt, and to invite from them the loyal co-operation essential to successful working of the judicial machinery. The differences of character and temperament between Sir John Scott and his successor are known to all having any acquaintance with Egyptian affairs, and to no others so well as to the Egyptian people, who have every-day experience of a distinct lowering of the quality of the justice meted out to them, not merely from the judicial bench, but also in the purlieus and accessories of the law courts. "Tant valent les juges, tant valent les lois."

On this matter plain speaking is necessary, if only in confirmation of Lord Cromer's incautious admission not merely that "there may be a certain amount of truth" in allegations as to inefficiency of the police, bad organisation of the ghafir system, and excessive leniency of judges in the Egypt of to-day, but also that "the judicial system is ill adapted to the requirements of the country."

Degeneration of the Judiciary.

To begin with, the native judges, especially those of the lower grade, are quite inadequately paid, particularly when regard is had to the fact that they are frequently transferred from one end of the country to the other, in which case they have to make fresh arrangements for house-hire, furnishing, and the transport of their families. Although he has been in a far more favourable position than was Sir John Scott, to procure such additional Treasury grants as would enable the native judges to draw salaries sufficient to the maintenance of their dignity and independence, Sir Malcolm McIlwraith is not solely to blame for shortcomings in this respect. He is primarily responsible, however, for the further degeneration of the native judiciary—in legal training, moral fibre, and, yet more, opportunity to make proper use of the intellectual and other talents its members possess—many of them in large measure—which has taken place during his ten years' office as Judicial Adviser. In the Court of Appeal, sitting in Cairo and composed of ten European and ten native Councillors, it is the rule, in theory, that none can be dismissed from their posts. But there is no such rule as regards the judges of inferior rank, and, as a

matter of fact, there is no distinction in this respect between judges of higher or lower grades, as ways and means can always be found by the authorities for getting rid of any whom they dislike, whether natives or Europeans. If flagrant cases of this sort have occurred in the Mixed Courts, scandals of a more grievous description are plentiful in the Native Tribunals. Not only are judges of the latter tribunes who are obnoxious to the Government dismissed or forced to resign, but others are openly rewarded for misuse of their powers.

In support of the first assertion there may be cited the cases of Yussef Bey, Sadiq and Shimi Bey, native judges of the Mixed Courts who were simultaneously dismissed, on the allegation that they had been meddling in politics. Nothing of the kind had taken place; but both had manifested a judicial independence which was obnoxious to Lord Cromer.

In support of the latter assertion, mention may be made of the case of Fuad Bey Gress, a Coptic Christian, and for some years a judge in the Native Court of First Instance, who had repeatedly, but in vain, asked for promotion to the Court of Appeal or transference to the Mixed Courts (where the pay is about double that in the Native Tribunals) before, in dealing with the notorious "fox-hunting case" of 1901, he found opportunity of sufficiently proving his worth to the authorities. In this affair some British officers, in search of a Sunday morning's amusement, broke into Mr. Wilfrid Blunt's small game preserve at Matarieh, near Cairo, and, the owner being absent in England, were forced back by his watchmen. "The officers were the aggressors," says Mr. Blunt, "having struck the first blows on my native servants with their hunting-whips, and were thus wholly in the wrong. The servants had at most struck one blow and thrown a clod of earth in return, inflicting injuries so slight as to have left no marks, not even a contusion."—('Atrocities of Justice in Egypt,' p. 30.)* But the General in Command at Cairo asked the British Agency that "the chief offenders might be severely punished," and the request was complied with by Fuad Bey Gress, before whom the case was brought for trial. In order to increase the severity of the punishment awarded to three "chief offenders," he sentenced them severally—under a section of the Code which did not apply to the offence—to terms of six, four and three months' imprisonment. On appeal, and after questions had

* Mr. Blunt gives his version of the facts, which is not quite in agreement with the above brief statement; but the sequel in the judge's favour is not recorded in the pamphlet.

been put in the House of Commons, the sentences were reduced, and the judge was corrected on the legal point. For all that, Fuad Bey Gress, within half-a-year, was advanced to a judgeship in the Mixed Courts.

A worse example of promotion for extra-judicial services is that of Ahmed Fathi Bey Zaghlool, brother of the present Minister of Education, and himself now Under-Secretary of State for Justice, but previously the President of the Native Tribunal in Cairo. An action for wrongful dismissal having been brought against the Government in February, 1904, by Judge Blariaux, a Belgian since deceased, documents were produced in open court which proved that the dismissal was based on secret reports made to Lord Cromer by Ahmed Fathi Bey Zaghlool—a device by which several native, and at least two English, judges have in recent years been ruined in Egypt. The reward of the complaisant President of the Cairo Native Tribunal was not immediate; but he was employed in the preliminary examination of witnesses at the mock-trial of the Denshawai prisoners, in otherwise getting up the case against them for the prosecution, in further assisting at the trial as the only Mussulman on the bench, and, according to report, in writing the judgment against them. Since then, after a short enough interval to connect cause and effect, he has been raised to the rank of Pasha and appointed to his present post of under-Secretary of State in the Ministry of Justice.*

Other illustrations could be furnished, in abundance, in support of Lord Cromer's suggestion that, in Egypt, "the judicial system is ill-adapted to the requirements of the country," and also of Sir John Scott's motto, "Tant valent les juges, tant valent les lois." But there is no necessity for calling attention to the delinquencies of other judges in Egypt, whose worst fault is that they had not strength enough to resist the threats or temptations to which they were exposed.

Who, then, is to blame for such falling off as has occurred in the character and quality of the Egyptian judiciary? Certainly not the Egyptian people who suffer from it, directly and indirectly; nor the unworthy judges so much as the British authorities who think they

* It may here be noted that two other subservient agents in the Denshawai proceedings have been recompensed for their share in them—Boutros Pasha Ghali, the President of the Special Court, who was at that time Minister for Foreign Affairs and is now Prime Minister; and Mr. Bond, described in official documents as holding a position similar to that of the Lord Chief Justice in England, who had his salary raised as Vice-President of the Native Court of Appeal.

benefit themselves or others by their tactics; and especially the Judicial Adviser, who, under the Consul-General, is responsible for the sound management of the Ministry of Justice.

Disorganisation of the Bar.

And where the Bench is ill-looked after and crippled in its functions, it cannot be expected that the Bar will be in a healthy condition—though in this respect the late Procureur-Général is, perhaps, as much to blame as the Judicial Adviser. Sir John Scott laboured hard, and did much, to provide good training for young barristers, and to keep them up to the mark after they had been admitted to practice; and the schools he started or improved are still at work; but there is no one now to continue his refining and restraining influence. In Egypt there is no such "bar organisation" as exists in England, France, and most other European countries. When a barrister is charged with unprofessional conduct, he is called before a Council of Discipline, upon which his follow-barristers are entirely unrepresented. The Council consists solely of judges and of the Procureur-Général, whose professional interests are incessantly in conflict with those of counsel for the defence. The Council has autocratic powers of disbarring the accused barrister. It has likewise the power of inflicting a fine of £50 in the event of his having been required by a Native Court in which he practises to undertake the defence of an otherwise undefended prisoner, and has failed, after having received the *dossier*, to appear on the day of trial. For the rest, barristers take whatever fees they like or can get, sometimes in kind—as, for instance, grain or beasts—and they are generally at liberty to tout for business and follow other unprofessional ways. In the Mixed Courts an Order of Barristers has been established, with great gain to the Bar in prestige; and an effort appears to have been made a few years ago to procure a like organisation for the Native Courts. Meetings to that end were held, and regulations framed by the leaders of the movement were submitted to the Judicial Adviser, Sir Malcolm McIlwraith, who, however, did not favour the scheme, and it had to be dropped.

As in France, so in Egypt, there is a *Magistrature Assise* and a *Magistrature Debout*, the former consisting of judges, the latter of public prosecutors, *i.e.*, the Parquet. These form a class apart, and it is only in the most exceptional instances that men have been raised from the Bar to either of the two divisions, although, on the other hand, cases are not infrequent in which judges forced to resign have been allowed to seek a livelihood at the Bar. Three notable cases of this sort come to mind.

The disadvantages of maintaining the Bar and the Bench as separate classes are threefold. Firstly, the Bench and the Parquet, never having been advocates, tend to take in every criminal case a view hostile to the prisoner. Secondly, the harmonious relations which subsist in this country between Bench and Bar can have no existence. And thirdly, the encouragement held out in England to barristers of possible promotion to the Bench as a reward for professional proficiency is in Egypt entirely absent. The admittedly unsatisfactory condition of the Egyptian Bar necesssarily conduces to the equally unsatisfactory condition of the Egyptian Bench. A strong Bar, in virtue of its power of criticism as well as its handling of cases, is a necessary adjunct to an efficient judiciary. Where the Bar is ill-trained and wanting in independence of character, it can render no such assistance. It aggravates the unavoidable misfortunes incident to the inadequate, if not impracticable, plans of the British authorities for distributing between the Ministries of the Interior and of Justice control over the diverse parts of the complicated machinery thought suitable for the repression of crime.

Interference with the Mudirs.

Lord Cromer assigned to Sir Eldon Gorst, who was Judicial Adviser to the Ministry of the Interior from 1894 till 1898, most of the credit, or at any rate most of the responsibility, for the upsetting and partial reconstruction of the old machinery for the administration of affairs in the Egyptian provinces through their respective Mudirs, or titular Governors; but the confusion and disaster consequent on this change have been far more apparent since Mr. Machell, a subordinate notably approximating to Lord Cromer's ideal, succeeded to the office from which he has only lately retired after ten years' holding of it. The policy that each of these lieutenants worked out to the best of his ability, however, was evidently and peculiarly Lord Cromer's.

Covering much ground only indirectly connected with the administration of justice, and therefore outside the scope of our present inquiry, the bearings of this policy of "meddle and muddle" on the question immediately before us are well summed up in the following communication from an exceptionally well-informed correspondent of the *Egyptian Gazette* which was published in the number of that journal for 31st December, 1908:—

"If we would form a just estimate of the present, in view of making provision for the future, we must examine the past with an impartial eye.

This, by inquiry, discussion, and careful sifting of evidence, I have endeavoured to do, with a result that leaves no doubt upon my mind that for the prevailing insecurity and the increase of crime Lord Cromer, and Lord Lord Cromer alone, is responsible.

"The ground upon which I base my judgment is that during the many years he ruled over Egypt, it was his settled and persistent policy to humiliate those who until his coming had exercised authority in the country. In his ruthless course of destruction even the youthful Khedive was not spared. It may be that those who formerly wielded power exercised it capriciously brutally, and without scruple. I will not deny that in some instances such was the case. But, if you wish to avoid anarchy, you must, before breaking down existing authority, find an adequate substitute. What was the substitute whereby Lord Cromer sought to replace what he designated the baleful rule of the Pashas? It was nothing but a handful of raw, ill-educated British youths, who, to use Burton's appropriate dictum, 'ought still to have been at college, instead of holding positions of high emolument and serious responsibility.' These raw youths were set over the Mudirs—men whose age and experience entitled them, when they acted with justice and impartiality, to the respect of their fellows. They had hitherto been looked up to with the esteem and veneration befitting their high functions. But from the moment when the Cromer régime became firmly established they found their power supplanted by strangers, ignorant alike of the needs of the nation, its language, its religion, its usages and traditions. Not an order could be given nor a document signed, even of the most formal or insignificant description, without the sanction of the new-comers. Robbed of every vestige of real authority, the more wealthy amongst them resigned, whilst the poor found themselves compelled to submit uncomplainingly to the new order of things. The results took some years to make themselves fully apparent, though timely warning came from the unusual increase of crime. To this Lord Cromer turned a deaf ear. His proud and domineering nature could never bring itself to acknowledge himself in the wrong. So matters were allowed to drift until we are now face to face with a situation the gravity of which will tax the capabilities of the British authorities to the utmost."*

Sir John Scott, in his efforts to reform the Egyptian judicial machinery, was sorely hampered by the difficulties consequent on the arrangements, or lack of arrangements, here condemned. But the

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[* Under the more progressive rule of Sir Eldon Gorst the Mudirs have to a great extent regained their authority. Complaints, however, are being made that judges, without training or experience in administration, are appointed to such posts. There was once a law that judges should not be eligible as Mudirs. This law appears to have been abrogated, or at all events disregarded.—ED.]

difficulties have been much increased since his time, partly through neglect or perversion of projects for improvements started or suggested by him. In his Report for 1907, as British Agent, Sir Eldon Gorst wrote:—

The Mudirs and the Parquet.

"The duty of repressing crime is divided between two separate bodies—the police and the Parquet—working on rather different lines, the police being a decentralised force under the orders of the Mudirs, and the Parquet a centralised body directed from the Ministry of Justice. This has resulted in a want of solidarity and occasional friction between two administrations which must combine against the common enemy if crime is to be properly punished. Though many improvements have been carried out of late years both in the Parquet and in the police, and though both bodies have doubtless gained in efficiency, the results of the criminal investigations carried on jointly by them have been somewhat disappointing. At the present time more than half of the perpetrators of serious crime remain unpunished; and a point that is even more unsatisfactory is that the proportion of crimes of which the authors cannot be discovered has of late years shown a distinct tendency to increase.....

"The first step towards remedying this state of affairs would seem to be the establishment of more intimate relations between the local officials and the Parquet, and with the view of improving matters in this respect, instructions were issued at the commencement of this year (1908), by the Ministries of the Interior and Justice. Further, at the same time, the Prime Minister called together the Mudirs and Chefs de Parquet and impressed upon them the necessity of vigorous and harmonious co-operation in the work of investigating crime and bringing offenders to justice. The effect of these measures will not be apparent for some time, but it may be hoped that they will ultimately result in the attainment of a higher degree of public security." ('Egypt, No. 1, 1908,' p. 23.)

The situation surely is one that requires much graver treatment than the circulating of cut-and-dried written instructions and the delivery of one or more oral lectures, neither of them expected to have any apparent effect for some time. But Sir Eldon Gorst is, at any rate, to be commended for having thrown cold water on, as he said in the same report, "the proposal which appeared to attract the greatest amount of support amongst the well-to-do classes of the country," which was "that the local executive officials should be given power to exile all bad characters in their districts." "It is obvious," Sir Eldon rightly pointed out, "that it would be most undesirable to go outside the ordinary legal procedure, and it would be impossible

to provide sufficient guarantees against arbitrary interference with the individual."*

The "local executive officials" are, of course, the Mudirs of the provinces, and the Mamurs, Omdehs, Sheikhs, and others under them, together with the European Inspectors attached to the several mudiriehs for the purpose of "obtaining accurate information of what is happening in the provinces," and who, in Sir Eldon's opinion, "should be few in number and very carefully chosen, well acquainted with the language and the people, and able to keep in touch with what is going on without interfering in the conduct of the administration." Unfortunately there has never yet been in the Anglo-Egyptian service a sufficient number of Arabic scholars, always discreet and duly sympathetic, to act as mentors to the Mudirs and their subordinates, as well to fill all the other offices, requiring nearly as delicate and skilful handling, which the British Agency has to fill.

The Mudirs and their Subordinates.

The following extract from the *Egyptian Gazette* of 23rd December 1908, only a week before the date of the remarks already quoted forcibly illustrates the unsatisfactory state of affairs at present:—

"A most remarkable instance of the deplorable ineffectiveness of the machinery employed by the Ministry of the Interior in its dealings with the incompetence of its functionaries has lately been exemplified owing to the result of the official inquiry into the circumstances of the Nag Hamadi brigandage case. During this year, and last as well, the Markaz of Nag Hamadi has been suffering from a reign of terror owing to the depredations of some thirty robbers who were under the leadership of a negro remarkable for intrepidity and crimes. Complaints against the misdeeds of these men were rife all over the district. The Mamur of Nag Hamadi, whose district is only two miles away from the headquarters of the brigands, never took any steps to suppress the miscreants, and was a short time ago suspended for his neglect in this matter by Mr. Russell, the Inspector of the Interior. After the robbers had been captured a few weeks ago, the Ministry sent Mr. Hazel to hold an inquiry. The case was worked up in a very practical manner by the Sub-Mudir, who had a great deal of trouble to get up all the evidence. The Mamur declared that he knew nothing about the robber band, despite the fact that for months past the whole country side had been ringing with their misdeeds. A number of omdehs and sheikhs gave evidence as to the extraordinary neglect of the Mamur. Unfortunately the Mudir is

[* Sir Eldon Gorst has subsequently renounced this opinion to the extent of establishing under the law of 4th July, 1909, a system of deportation of bad characters under administrative order.—ED.]

a great friend of the Mamur and by no means a friend of the Sub-Mudir, and he now declares that the latter got up all the evidence merely to serve his own ends. The result is that, although three omdehs swore that the Mamur had had explicit notice given him of the presence of the brigands in the immediate neighbourhood, the man has been reinstated in his official position again. The consternation and surprise at the result is great in the Markaz; and the unfortunate sheikhs and omdehs who gave evidence as to the conduct of the Mamur are in a great state of alarm as to what form of vengeance they will have to suffer from. The result of the inquiry is an excellent commentary on the want of administration prevailing throughout the provincial system of the Ministry of the Interior."

The Ghafirs and the Police.

If the Mudirs and Mamurs are not always to be relied upon, moreover, still less confidence can be placed in the native police, so-called, and on the ghafirs or village watchmen, notwithstanding all the efforts and pretences of the Ministry of the Interior at improving the condition and competence of these nominal agents of the Mudirs. The ghafirs, although now paid small wages, armed and equipped at the Government's expense, and looked after by non-commissioned officers, have to partly support themselves by working on their own or other people's land, and, like the omdehs, "may," as Lord Cromer reported in 1907, "be regarded, to a great extent, as private individuals rather than as Government servants." They are in fact regarded as to some extent in league with the predatory class, and quite recently it was reported not only that the inhabitants of Abbasiyeh, taking this view, had arranged to pay the Bedouins, who are the marauders of the district, regular blackmail to guard their homes; but that the Government had employed Bedouins as guardians of the public peace. In point of fact, the regular police are both underpaid and undermanned. The city of Cairo with a population of about 750,000, has a police force of only 1,500, and these are employed mainly by day. At night when the need is greatest, hardly any but ghafirs are on duty, and these, in their poverty, beg for gratuities. As regards the regular police force, too, although as far back as 1891 Lord Kitchener instituted a Police School which has since been maintained in a niggardly way by the Government, and in which "some 300 cadets are now being passed annually through the school," and, "after a training which lasts six-and-a-half months, become constables and receive a higher rate of pay than those recruited from the army," the best Lord Cromer had to say in 1908 was that "here, as elsewhere, no very immediate or striking results are to be expected from an improved system of administration," and that "all

that can be done is to move gradually in a right direction in the hope that, by persistent effort, some real improvement will be effected."

Lord Cromer also quoted from Mr. Machell these two curiously inharmonious—or are they correlative?—sentences :—

"It is sometimes said that the superior intelligence of the new class of constables is employed to extort larger sums of baksheesh than ever from the population." "I do not suppose that any policemen in the world receive a better training."—('Egypt, No. 1, 1907, pp. 70, 71.)

It is, however, unreasonable to suppose that much honesty or zeal, intelligence or discipline, can be found or cultivated in a police force of which, as Sir Eldon Gorst reminds us, "hitherto the greater part has been composed of conscripts who have finished their term of service with the army." Military service is compulsory in the Egyptian army, and only those who are too poor and friendless to provide substitutes—that is, as a rule, only the scum of the population—will submit to the ten years of drudgery or slavery involved in their recruitment. For some years past these unsatisfactory soldiers have been allowed or compelled, according to their merits or demerits, to spend the second half of their bondage in police work, and "it is not to be expected that an efficient force can ever be formed out of men whose only desire is to leave the service as soon as possible and return to their villages."

That is Sir Eldon Gorst's admission ; and if no better arrangement is possible, and if this one is properly carried out, it cannot too soon be followed by fulfilment of the promise in his report for 1907. There we read :—

"It is now proposed to utilise a portion of the proceeds of the payment for exemption from military service to abolish altogether the obligation to serve in the police after the completion of five years in the army. Consequently, in a few years' time, when the present men's time has expired, the whole force, with the exception of the guard companies, whose service is instead of—and not additional to—army service, will be composed of volunteers, drawing sufficient pay to make dismissal for bad conduct a real punishment."—('Egypt, No. 1, 1908,' p. 23).

At the same time, much more than a thorough reform of the Egyptian police in all its branches is essential to the setting up of efficient machinery for the maintenance of public order and co-operation with the judiciary in upholding the dignity of the law and the successful administration of justice. That can only be done by the adoption of judicious and effective measures for bringing under one firm control the now discordant functions assigned to the more or less nominal direction of the Mudirs and the Chefs de Parquet.

V. Present Deficiencies and Requirements.

The very able and temperate writer of 'Letters from an Egyptian upon the Affairs of Egypt' prefaces his remarks on faults in the machinery for administration of justice in his country by an apt quotation from David Hume. "We are to look upon all the vast apparatus of our government as having ultimately no other object or purpose but the distribution of justice," wrote the British philosopher, with profound truth. "Kings and Parliaments, fleets and armies, officers of the court, of revenue, ambassadors, ministers, and privy councillors, are all subordinate in their end to this part of administration."

How extremely unsatisfactory are present arrangements, ostensibly for "the distribution of justice," in Egypt must be evident from the review, incomplete and fragmentary as it is, which appears in the foregoing pages. It may be well, however, briefly to sum up the conclusions there pointed to, and to emphasise some of the suggestions there offered, partly by quotations from the volume just referred to, which has a special value as expressing the shrewd and well-grounded opinions of a native statesman whose patriotism is not impaired by his loyalty to the British Crown.

The Codes of Law and Procedure.

It is no contradiction of Sir John Scott's motto, "Tant valent les juges, tant valent les lois," to say that the prime essential of any organisation for the distribution of justice is that the laws themselves should be just, well suited to the needs of the people subjected to them and intended to be benefited by them, so clearly framed as to be within the comprehension of all, and as far as possible safe from misinterpretation or misapplication. Notwithstanding the labours of Sir Malcolm McIlwraith's inexpert assistants, the Revised Criminal Procedure and Penal Codes for which he has the credit are in few cases better, and in many are worse, than the originals they are supposed to improve upon; and the adoption of these originals from French models is condemned, or at any rate regretted, even by Lord Cromer. "A simpler code of law and procedure, somewhat similar to that which was subsequently introduced into the Sudan, would—more especially in criminal matters—have probably been more suited to the requirements of the country than that which was actually adopted," wrote Lord Cromer; and he quoted in support of his view the statement of the French jurist, M. de Lavigne Sainte-Suzanne, that "s'il est absurde de transporter

chez des peuples encore primitifs tous les rouages administratifs en usage dans la vieille Europe, il devient dangereux et inique d'imposer aux indigènes notre législation et notre organisation judiciaire" ('Modern Egypt,' vol. ii, p. 516). The Sudan Codes, however, which are based on the Indian Codes, instead of being simpler than the Egyptian adaptations of French methods, are still less suited to the capacities and conditions of the Negro and Negroid communities around Khartum and beyond it, and their extension to Egypt would be preposterous and intolerable. Writing of Sir Malcolm McIlwraith's compilations, an Englishman thoroughly acquainted with the subject, and formerly a judge in Cairo, states :—

"I should replace them by codes which are simple and well suited to the habits and traditions of the people. In drafting such codes I should be guided by the Sharia, or sacred Moslem law, where it does not conflict with modern notions of natural justice. The codes should possess a purely Mussulman character. If I am told by our learned quidnuncs that that is impossible, I have only to refer them to the Ottoman Codes, which are spoken of with high eulogy by no less an authority than Sir Roland K. Wilson."—(See 'The Journal of the Society of Comparative Legislation, 1907,' pp. 41-50.)

If this suggestion is too comprehensive to be acted upon without careful deliberation, there should, at any rate, be no delay in making important and urgently needed alterations in the procedure of the law courts, of which there is striking illustration in the following observations by the same correspondent :—

"There are no rules of evidence. Witnesses, when called, tell their own story in their own way, saying whatever they think they have heard, &c., &c. The Parquet (representing the Public Prosecutor) then may put questions, but, in practice, only through the judge, and the same is the case with the counsel for the defence. There is no cross-examination, that most powerful and effective instrument in the hands of a skilful practitioner for eliciting the truth, and, consequently, no re-examination. Witnesses run off their evidence as if they had learned it by rote, without interruption in the case of irrelevancies. The judges, more often than not, salve their consciences by giving light sentences when they ought either to acquit the prisoner or to treat him with exemplary punishment, the reason being that they are doubtful whether the witnesses have told the truth."

The European and Egyptian Judiciary.

It is of no less importance, however, that the laws in Egypt should be well administered by capable judges than that they should be good laws in themselves and suitable to the population called upon to obey them. It has never been denied by reasonable Egyptians that in the

dispensing of justice, as in the management of finance, in the initiation and control of engineering and other great mechanical undertakings, in the conduct of mercantile operations on a large and international scale, and in much else, the co-operation of competent and right-minded Europeans with equally competent and right-minded natives is still, and for some time to come will be, on every ground desirable. "There can be no doubt, to my way of thinking," writes the Egyptian statesman already referred to, "that the advantage of associating European judges, when properly qualified, with Egyptian judges, is considerable." But, for their presence to be advantageous, the European judges must be indeed "properly qualified." Facts stated in previous pages are confirmed by the Egyptian's allegations :—

"Inquiry would amply show that most of those selected to fill eminent positions in the judicature, and to discharge correspondingly responsible duties, are neither of such established reputation in their profession as to impress their native colleagues with the requisite authority, nor of such ripe experience that their judgment, though fallible as with all mortals, may, in general, command public confidence and respect. If their record be examined, it will be found that some of them, though not all, have fulfilled the perfunctory requirements of eating the prescribed number of dinners at an English Inn of Court, and have been called to the English Bar after reading, perhaps for a brief period, in an English barister's chambers. But, as far as I have been able to ascertain, few of them have ever conducted a case in a European court of law, or have ever played within its precincts any more important rôle than that of a casual spectator.

"Is this the class of man who, enjoying very high emoluments, supplemented by lucrative lectureships at the Khedivial School of Law, should have confided to his keeping the lives, liberties, and property of the Egyptian people? I take leave to assert that the employment of unqualified or imperfectly trained officials by the Ministry of Justice is a stumbling-block to the fair and efficient administration of the law, humiliating to the nominees, and an affront to diginity and common sense."—('Letters upon Egyptian Affairs,' p. 20.)

Most of the judges now appointed to the Courts of First Instance are Egyptians. But in the Court of Appeal they are fewer, and in the Mixed Courts, Europeans preponderate. Concerning the young Englishmen appointed to judgeships our critic proceeds to say, with good reason :—

"Their education and their whole turn of mind are likely to be at variance with the views of the native judges, and the changes they would seek must be with a leaning to the extension of the forms and principles of

the law they best understand. They are slow to admit the value of many of the institutions of the natives, of the inflexibility of their usages; they judge of the character of the inhabitants from an alien standpoint. All this is natural.....But I am bound to observe that the introduction of such persons into the highest branches of the administration can but have for its eflect the progressive depression and deterioration of the Egyptian civil service."—(*Ibid.*, p. 22.)

So in the most favourable conditions. In others things are worse.

"It is perhaps but natural that with the vast majority of your English functionaries on their first arrival evil communications corrupt good manners. They fall into the mode of thinking which they find common amongst their English colleagues. They take it for granted that the natives are a low, degraded set, with very few good qualities, and that their institutions and customs are excessively bad, whilst they and theirs, on the contrary, are everything that is excellent, and that the Egyptians ought to be pleased and grateful to them for substituting a good government for their bad one.....

"The contempt with which the native judiciary and, in fact, all native functionaries are treated by their English colleagues is a source of most serious complaint. To *think* is a crime: to yield blind obedience—and to submit to being the butt upon which British officials, even when subordinate, may demonstrate their superior intelligence by meddlesome interference and captious fault-finding—is the summit of virtue in native Government officials. Too little regard is paid to their opinions, experience and learning. They are ever kept at a distance. Their abilities and talents are estimated too lightly, and consequently not alone the judicial but the whole British administration in Egypt is too much founded upon European notions and doctrines."—(*Ibid.*, pp. 24, 25.)

Moreover:—

"The judges are not judges in the sense in which you in your country regard the holders of that office. They are mere judicial officers bound to be at the beck and call of those who are their hierarchical superiors. The weakness of their position, and the consequent injury to the administration of justice, will be manifest on the mere statement of this fact to the most superficial of observers.

"Another cause of the ill-success of British justice in Egypt is that most of the judicial officers are appointed when much too young. Learning, patience, temper, judgment, penetration, and experience are the necessary qualifications of a good judge. A young man may possess some of these qualities, but nature will hardly admit of being so forced as to bring them all to maturity before the season of age. For these reasons, and without imputing any natural defect of judgment to the junior members of the Bench, I venture to think them unsuited for their judicial office."—(*Ibid.*, p. 25.)

Objecting strongly to the appointment to responsible positions in the Egyptian judicature of incompetent English barristers, many of them not even having adequate knowledge of the language in which they are to hear evidence on the cases on which they are to decide, and objecting as strongly to the exposure of native holders of the office, or candidates for it, to degrading influences that preclude the fittest men from seeking or accepting them, the Egyptian letter-writer states clearly and forcibly the groundwork of the arrangement that ought to be aimed at and ensured in associating European and native experts in the law on the Egyptian Bench :—

"To the superiority of the native over the European in eliciting and judging of native testimony there is, with rare exceptions, abundant proof. The proposition is, indeed, self-evident. The one is working in his own language, among his own people. He is familiar with their turns of thought, their objects, and their devices. He can detect the faintest index that a phrase may afford, and trace the motive of every common action. He knows what interests will affect the testimony. The circumstances spoken of, the transactions, the customs, are all equally familiar to him. He knows what questions to put, and how to estimate the answers given. He can weigh accurately all the surrounding probabilities. His mind, stored with all such facilities and knowledge, acts promptly. He may be said to arrive at his judgment of the fitness or the truth of what is put before him almost by intuition.....But to the European all is foreign. All has to be acquired by painful labour, and at the best but imperfectly. His intelligence may not be of the highest order. The faculty of acquiring a foreign language is, in a degree, a peculiar one. He may be wanting in observation or discernment. He may be deficient in industry. He is dependent on others for his information, and these may mislead him. He has to struggle against preconceived notions, obtained from experiences in another land. Easily, perhaps, duped, he gets disheartened in his toils upon the judgment seat. The natives of the lower class practise upon him more than they would venture to do on a compatriot. The falsehoods ranging around him at length make him more sceptical, and he rejects all evidence because he is unable to sift any.....

"There can be no doubt, then, of the advantages of the native judges in judging of transactions amongst this people through the testimony of their compatriots. On the other hand, there is an important circumstance which forbids the application of this agency in its entirety. Native justice has not yet reached at all points the ethical standard prevalent amongst the more enlightened nations of modern Europe..... Taking it for granted that European supervision is absolutely required, there can be no better way of providing it than by associating the European with the native on the same

Bench. It would only be on the occurrence of supineness or utter blindness that the means of justice, under this system of dispensing it, could be seriously perverted. Nor can I conceive any other system so well calculated to promote, under proper conditions, the elevation of those whose training has been purely Oriental. Thus aided, the Egyptian can be subjected to no disparaging over-rulings. He should have co-operation rather than control. Only if placed on an official equality with the European can there be a hope of his rising to the same high sense of public duty."—(*Ibid.*, pp. 31-33.)

If these eminently sound opinions were held and acted upon by the British custodians of Egypt, they should have no great difficulty in so improving, gradually, but rapidly and thoroughly, the composition and character of the Egyptian judiciary—with a wholesome leavening of the native mass by addition to it of a few well-chosen Europeans, and also with concurrent reforms in other matters within the purview of the Ministry of Justice, and to some extent of the Ministry of the Interior —as to confer enormous benefits on all sections of the native population and to be of scarcely less advantage in purifying and giving healthy vigour to the association of Europeans with Egyptians.

A detail reform of no small practical importance would be a proper limitation or re-arrangement of the duties of the Procureur-Général. At present they are of the most heterogeneous description. The main or typical work of the official in question is to examine *dossiers*, and give orders for prosecutions, or enter a *nolle prosequi*. In addition, however, he has (1) to sit upon Councils of Discipline both for judges and, as we have seen, for barristers; he is (2) one of the visiting justices, and as such has to inspect prisons; (3) he is supposed to inspect periodically the parquet of every tribunal in the country; and (4) he has been, if he is not at present, on the Board of Examiners of the School of Law. It is difficult to believe that such multifarious duties can all be properly performed.

Enough, it is hoped, has already been said to indicate the nature of—and the need for—the other reforms here referred to. They include, not only amendment and considerable reshaping of the existing Codes of Law and Procedure which regulate the conduct of affairs and the decisions arrived at by the judges in the various courts over which they preside, but also provision of adequate arrangements for the legal training of students intending to follow the profession of the law and for the maintenance of professional honour and dignity among all who are allowed to practice in those courts or to hold employment in other ways con-

Other Necessary Reforms.

nected with the administration of justice. They include, moreover, such complete and satisfactory overhauling of the functions severally assigned to the police and the parquet in Egypt, and of their relations with one another as will put an end to the complications and embarrassments that have been a constant source of scandal and grievous harm —facilitating the evasion by wrongdoers of punishment for their offences, exposing innocent persons to risk of punishment for the crimes of others, and encouraging the general spirit of lawlessness with all those attendant miseries which have been deplored and denounced, but scarcely lessened, ever since the British Government made itself responsible for the establishment of orderly and equitable rule in the country. And, of course, an essential part of any reforms that may be attempted must be such a reorganisation of the Ministry of the Interior, as well as of the Ministry of Justice, and especially of the "advisory" and other powers assigned to European officials in both these departments, as will give reasonable assurance that the rest of the reforms will be honestly carried out.

The English Precedent.

Our English machinery for the administration of justice and the maintenance of public order is by no means perfect, and in the very different circumstances with which any Egyptian system would have to deal it would be foolish to ask for, or to expect successful working from, any attempted imitation in Egypt of the English system, wherein—notwithstanding the fact that its titular head is a member of the Government and, like his colleagues, dependent on Parliamentary support for his selection and continuance in office—an elaborate judicial establishment is practically outside the control of the King's Ministers, and to some extent almost independent of the King himself. Yet nothing but gain should result from making as much approach as is possible to the British ideal of a strong and well-constructed judiciary, safeguarded as fully as may be from intimidation and corrupting influences of any sort, and at the same time in hearty alliance with the public departments and local authorities, whose business it is, not only to supply and keep in order court-houses, prisons, and so forth, but also to provide policemen and attend to all the other details incidental to protection of the public from lawbreakers, to the arrest and indictment of supposed lawbreakers, and to their detention both before trial, and in the event of their being found guilty, during the terms over which their punishment extends.

All that, and more, was aimed at and struggled for by Sir John Scott during his eight years of Judicial Advisership in Egypt, and he had something more than the nominal approval of Lord Cromer, who wrote in his annual report for 1890, "Above all, the judicial and police systems require to be put on a sound footing." But throughout the past ten years both systems have been steadily and lamentably slipping away from the footing on which Sir John Scott did his best to plant them firmly, in expectation of their going forward, not backward.

On 10th August, 1905, the following question was asked in the House of Commons by Sir David Brymnor Jones, K.C.:—

"Whether, seeing that there has been during the last few years, a continuous increase in the number of penal offences committed by natives, as shown by Lord Cromer's Annual Reports, the Secretary of State for Foreign Affairs will advise the Egyptian Government to appoint a Commission of Inquiry into the qualification of the judicial officers, both European and Egyptian, concerned in the administration of justice, into the system of criminal procedure now in operation in Egypt, and into the laws relating to penal offences in Egypt."

The Need for a Commission of Inquiry.

"There is no one in this country acquainted with the administration of justice—saving, of course, the responsible officials whose optimism blinds them to the actual condition of affairs," wrote the author of 'Letters upon the Affairs of Egypt' (p. 20), "who would not have welcomed such an inquiry as calculated to prove of immeasurable benefit to the Egyptian nation. Nevertheless the inquiry was refused."

Evidence as to the expediency and necessity of some such inquiry has been piling up in the past four years, and Mr. John M Robertson had ample warrant for the further appeal that he made on 17th November, 1908, in these slightly different terms:—

"Whether in view of the refusal to extend the legislative powers of the Legislative Council and General Assembly in Egypt, the Foreign Secretary will recommend to the Egyptian Government the expediency of appointing a committee to inquire into the working of the judicial, police, educational, and other departments of the administration, with a view to their amendment."

But Sir Edward Grey's reply was as disappointing as his predecessor's:—

"The questions referred to are occupying the serious attention of the Egyptian Government, and I do not think that in the present circumstances any useful purpose would be served by making the particular proposal suggested."

The appeal must be made again and again until it is acceded to.

POSTSCRIPT

AN extraordinary episode which took place in the past summer bring into startling prominence the failure of the authorities in Egypt to cope adequately with the problem of crime. The departure of the Khedive for Europe was made the pretext for a wholesale jail delivery. No fewer than 1,700 prisoners were released, ostensibly as a measure of "clemency." The real reason for this singular step is officially admitted to have been the sheer lack of prison accommodation. Even when the 1,700 were released the prisons were still overcrowded. The intention seems to have been to release only those convicted of minor offences; but it is alleged that in at least one instance all discrimination was abandoned, and a number of men convicted of the gravest crimes were set free. Had such a procedure been resorted to by any foreign Government, English comment would have been severe indeed. In view of such an incident it can hardly be claimed that England is setting up in Egypt the standards of Western civilization.—ED.

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